05.11.2020

C.R.R 1581 of 2020

Nilesh Kumar Agarwaal & Ors.
-Versus-
The State of West Bengal & Anr.

For the petitioner:	Mr. Amales Ray Ms. Mousumi Bhowal
For the State:	Rana Mukherjee

The petitioners have prayed for quashing of the criminal proceeding being Karya Woman Police Station Case No.10 dated 20th October, 2020 under Sections 498A/406/354/506 and 34 of the Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act, corresponding to CGR Case No.3399 of 2020.

The petitioner No.1 is the legally married husband of the opposite party No.2. Marriage of petitioner and the opposite party No.2 was solemnized on 28th November, 2019. It is alleged by the opposite party No.2 that in the month of July, 2019, a pre-wedding ceremony was held at her paternal home where the husband and his family members took Rs.1,00,000/- in cash, gold ornaments, jewellaries, accessories and cosmetics from them. After marriage, she went to her maternal home at Siliguri. Immediately after marriage, her parents-in-law demanded huge sum of money from the father of the opposite party No.2. On 6th December, 2019, her father-in-law demanded a sum of Rs.10,00,000/- in cash from her father for her wellbeing. He also directed that the said money should be paid to him through one Mr. Abhishek of B.C Jain Jewellers in Kolkata. The father of the opposite party was compelled to pay such money. Again, on 8th January, 2020 when the father of the opposite party No.2 went to

Siliguri to see her, her father-in-law demanded further money and his father was compelled to pay a sum of Rs.5,50,000/- in all through one Abhishek of B.C Jain Jewellers, Kolkata. It is further alleged by the defacto complainant that her husband and matrimonial relations used to misbehave with her and taunt her over the qualities of articles that were given to her at the time of marriage. They also abused her parents. It is also alleged that the father-in-law of the defacto complainant once outraged her modesty by touching her in inappropriate manner when she was lying in her room. Other accused persons also abused her and threatened her with dire consequences. On 1st March, 2020, she was sent to her paternal home. Since then she has been staying in Kolkata. Her husband never came to bring her back to her matrimonial home. Her personal belongings, ornaments, jewellary and other stridhana properties are lying at her matrimonial home. The defecto complainant tried to contact her husband but he refused to talk to her. On 15th June, 2020, a meeting was held at her paternal home with her husband and other matrimonial relations. After the meeting, they told the defacto complainant that they would inform about their final decision regarding matrimonial relations between the defacto complainant and her husband. However, they refused to make any contact with the defacto complainant. The defacto complainant has also given a detailed list of her sridhan properties in the FIR.

On such factual background the defacto complainant lodged an FIR at Karaya Women P.S on the basis of which police registered a case under Section 498A/406/354/506/34 of the Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act against the petitioners on 20th October, 2020. The said case is at the stage of investigation. The petitioners being the husband and other matrimonial relations of the defacto complainant has prayed for quashing the aforesaid criminal case mainly on two fold grounds, viz, the allegations made in the FIR are so absurd and inherently improbable that no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused and secondly, the criminal proceeding is manifestly attended with malafide and/or the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In order to substantiate his contention, Mr. Amales Ray, learned Advocate for the petitioners submits that marriage between the petitioner No.1 and the opposite party No.2 was solemnized on 28th November, 2019. After marriage she went to Siliguri with her husband. Both of them visited Europe for honeymoon from 11th December, 2019 to 29th December, 2019. They returned Siliguri on 3rd March, 2020. Thereafter the defacto complainant went to her paternal home. In the month of June, 2020 the petitioner No.1 filed an application under Section 12(1)(c) of the Hindu Marriage Act for annulment of marriage against her wife on the ground of fraud after the petitioner No.1 came to know that the opposite party No.2 had steady relationship with one Rohit Khaitan since 2010 and in the month of March, 2018 the opposite party No.2 lodged complaint against the said Rohit Khaitan and his family members that though he promised to marry the defacto complainant, he refused to marry her though the date of marriage was fixed on 9th December, 2017. The defacto complainant received summons of the aforesaid matrimonial suit on 12th October, 2020 and on 20th October, 2020 the defacto complainant lodged a complaint on the basis of which Karaya Women P.S Case No.10 of 2020 was initiated.

According to Mr. Ray, the FIR filed by the opposite party No.2 is a product of falsehood. It was maliciously instituted with the motive only to take revenge against her husband and other matrimonial relations due to her personal grudge as the petitioner No.1 instituted a suit for annulment of marriage against the defacto complainant.

Mr. Ray further submits that in the FIR the defacto complainant stated that her father paid a sum of Rs.10,00,000/- on 6th December, 2019 to her father-in-law through one Abhishek of B.C Jain Jewellers and again in the same paragraph she stated that on 8th January, 2020 her father-in-law threatened her father to pay the money immediately. Accordingly her father paid a sum of Rs.5,50,000/- through one Abhishek of B.C Jain Jewellers. It is pointed out by Mr. Ray that the petitioner was not sure with regard to the alleged claim of dowry by her father-in-law and payment of total amount of money by her father to her father-in-law. Once she said that her father paid a sum of Rs.10,00,000/- to her father-in-law to satisfy his illegal demand and in the same paragraph she stated that in all her father paid Rs.5,50,000/- to her father-in-law. From the face of the FIR the allegation seems to be absurd and improbable that no prudent person can ever reach a just conclusion regarding demand and payment of dowry. It is further submitted by Mr. Ray that in order to attract Section 498A of the Indian Penal Code there must be a prima facie case within the scope of "cruelty". Explanation to Section 498A states that cruelty means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

According to Mr. Ray there is no case of physical cruelty made out by the defacto complainant in the FIR. In support of his contention he refers to a decision of the Hon'ble Supreme Court in **Sushil Kumar Sharma vs. Union of India** reported in **(2005) 6 SCC 281**.

Referring to another decision of Delhi High Court reported in **ILR (2003) I Delhi 484 (Savitri Devi vs. Ramesh Chand & Ors)**, it is submitted by Mr. Ray that in the FIR there must be an element of harassment of women with a view to quashing her or any person related to her to meet any unlawful demand or property or valuable security. To constitute harassment, the defacto complainant must make out a case that she was tormented or tortured either physically or mentally through constant interference or intimidation. Secondly, such act should be with a view to persuade or compel her to do something which she is legally or otherwise not expected to do by using force or threats, and thirdly, intention to harass the woman should be to compel or force her or her relatives to fulfill unlawful demands for any property or valuable security. In the instant case, the defacto complainant did not make out any case that she was constantly tormented or tortured on demand of dowry. On the same point he also refers to another decision of the Hon'ble Supreme Court in the case of **Ramkripal vs. State of Madhya Pradesh** reported in **2007 Cr.L.J 2302**.

Mr. Ray further submits that there is absolutely no prima facie ingredient of offence under Section 406 of the Indian Penal Code, because in order to constitute an offence of criminal breach of trust defined under Section 405 of the IPC, the defacto complainant is required to make out a case that she entrusted her stridhana property or dominion over the stridhana property to her husband or any other member of the family and the said property was misappropriated by her/them. Since no such case was made out in the FIR allegation under Section 406 of the Indian Penal Code also cannot stand against the petitioners. In support of his contention he refers to a decision of the Hon'ble Supreme Court in **Rashmi Kumar vs. Mahesh Kumar Bhada** reported in **(1997) 2 SCC 397**.

It is also submitted by Mr. Ray that even assuming that the father-in-law of the defacto complainant once touched her, such alleged incident does not constitute an offence under Section 354 of the Indian Penal Code for the reason that by mere touching, "criminal force" was not applied and accordingly the said allegation cannot stand. Thus, even if the allegations made in the FIR are taken at their face value and accepted in their entirety, the do not prima facie constitute any offence or make out a case against the accused. Therefore, the FIR should be quashed on the ground that criminal proceeding should not be used as a coercive tool to harass innocent person depriving their constitutional right of life and personal liberty. In support of his contention Mr. Ray refers to a decision of the Hon'ble Supreme Court in the case of **Ramesh Rajagopal vs. Devi Polymers Pvt. Ltd** reported in **(2016) 6 SCC 310**.

Having heard the learned Advocate for the petitioner and on perusal of the application with the documents filed by the petitioners as annexures and the case laws filed by him, I like to state at the outset that there is no dispute on the question that the defacto complainant is legally married wife of the petitioner No.1. In the FIR the defacto complainant stated the petitioner No.1 knew about her premarital relationship. From the plaint of matrimonial suit filed by the petitioner No.1 for annulment of marriage, in is ascertained that the defacto complainant was in relationship with one Rohit Khaitan prior to his marriage with the petitioner No.1. Even her marriage with Rohit was settled in the year 2017 but it was not solemnized. According to the petitioner No.1, on the other hand he was completely unaware about such premarital relationship between his wife and one Rohit. He came to know about such relationship after his marriage. From the averment made in the plaint by the petitioner No.1, the reason for difference and dispute between the parties came to be explicit.

I have gone through the FIR time and again. The defacto complainant clearly stated that the father of the petitioner No.1 demanded huge amounts of money from her father. Her father was compelled to pay in all a sum of Rs.5,50,000/- to her father-in-law after marriage. Thus, prima facie case of illegal demand of dowry and payment of dowry is made out. When a wife is forced by her maternal relations to meet unlawful demand of money such illegal demand prima facie amounts to coercion in order to constitute an offence under Section 498A of the Indian Penal Code. It is not necessary that there must be persistent or continuous harassment, tormentation or torture on demand of dowry. If the wife or her paternal relation succumbs to a solitary demand of dowry after marriage and makes such payment such solitary incident amounts to harassment within the meaning of Section 498A, explanation (b).

The defacto complainant has given a long list of articles that are kept at her matrimonial home. In **Rashmi Kumar** (Supra) it is observed by the Hon'ble Supreme Court, " In view of the finding that stridhana property is the exclusive property of the wife on proof that she entrusted the property or dominion over the stridhana property to her husband or any other member of the family, there is no need to establish any further special agreement to establish that the property was given to the husband or other member of the family. It is always a question of fact in each case as to how property came to be entrusted to the husband or any other member of the family by the wife when she left the matrimonial home or was driven out therefrom. No absolute or fixed rule of universal application can be laid down in that behalf. It requires to be established by the complainant or the prosecution, depending upon the facts and circumstances of the case, as to how and in what manner the entrustment of the stridhana property or dominion over her stridhana came to be made to the husband or any other member of the family or the accused person, as the case may be" is the exclusive property or domain over the stridhana property to her husband or any other member of the family, there is no need to establish any further special agreement to establish that the property was given to the husband or other member of the family. It is always a question of fact in each case as to how the property came to be entrusted to the husband or any other member of the family by the wife when she left the matrimonial home or was driven out therefrom.

The defacto complainant has made a complaint before the police. It discloses prima facie a cognizable case. In order to find out whether the FIR story is true or false, investigation is absolutely necessary. On perusal of the FIR closely, I am not in agreement with the contention made by the learned Advocate for the petitioners. Only because the FIR was lodged after a suit for annulment of marriage was filed by the petitioner No.1 it cannot be held at this stage that it was maliciously made.

For the reasons stated above I do not find any reason to quash the FIR at this stage.

The instant criminal revision is thus summarily dismissed, however without cost.

(Bibek Chaudhuri, J.)