

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

C.R.R. 552 Of 2018

Sakina Banu

Versus

The State of West Bengal

For the petitioner : Mr. Upendra Roy
Mr. Sunny Nandy
...Advocates

For the Opposite Party : Mr. Saswata Gopal Mukherjee
Mr. Imran Ali
Ms. Debjani Sahu
...Advocates

Heard on : 07.10.2021

Judgment on : 26.11.2021

JAY SENGUPTA, J.:

1. This is an application for quashing of proceeding in G.R. Case No. 2752 of 2017 pending before the learned Additional Chief Judicial Magistrate, Uluberia, Howrah corresponding to Bauria Police Station Case No. 180 of 2017 dated 23.10.2017 in which a charge sheet was submitted under Sections 323, 325 and 448 of the Penal Code.

2. Despite service of notice upon the defacto complainant/added opposite party on several occasions, either through the State or by the petitioner, the defacto complainant has chosen not to appear before this Court.

3. Mr. Roy, learned counsel appearing on behalf of the petitioner, submitted as follows. The instant case was a counterblast to a prior criminal case initiated by the present petitioner against her in-laws. The petitioner happened to be the daughter-in-law of the present opposite party no. 2. First, the petitioner lodged a First Information Report on 18.10.2017 under Sections 498A and 325 read with Section 34 of the Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. This culminated in submission of charge sheet against the husband and the father-in-law under Sections 307, 325 and 498A of the Penal Code on 07.01.2018. The instant case relates to a subsequent First Information Report lodged by the petitioner's mother-in-law against the petitioner and her father on 23.10.2017 under Sections 323, 325, 380 and 448 read with Section 34 of the Penal Code. On 30.12.2017, a charge sheet was submitted against the petitioner under Sections 323, 325 and 448 of the Penal Code. The case instituted by the mother-in-law is nothing but a counterblast so that the petitioner can be dissuaded from pursuing her case against the other in-laws. In fact, it was the present petitioner who had suffered an injury in this case. No *prima facie* case was made out as against the present petitioner. The impugned proceeding was actuated by malice and thus, the consequent proceeding ought to be quashed in the interest of justice.

4. Mr. Ali, learned counsel for the State, led by the learned public prosecutor, submitted as follows. The present case was not a counterblast, but merely a counter case based on the version of the incident as given by the mother-in-law/opposite party no. 2. It appears that both sides fought with each other. Injury reports are present in the case diary supported by statements of eye witnesses. Both the cases were started from GD Entries lodged on the same date, i.e., on 17.10.2017. Reliance was placed on the injury report of the husband at page 19 of the case diary and statements of eye witnesses contained at pages 10, 11, 12, 29 and 30 of the case diary. The eye witnesses were mostly the neighbours of the victim. In fact, the families of the husband and the wife were staying in the same neighbourhood. The second case diary which pertained to the case started at the instance of the wife/petitioner also contained an injury report at page 13 and the statements of eye witnesses/neighbours at pages 7, 41 and 44 of the case diary. Evidently, the injuries suffered by the victim in the other case were more serious and she had to be admitted in hospital. However, this does not provide a ground for quashing the present case where materials collected during investigation clearly make out a *prima facie* case against the present petitioner.

5. I heard the submissions of the learned counsel appearing on behalf of the petitioner and perused the copies of the case diaries produced.

6. Quite often, it is found that a false case is started as an afterthought to thwart a prior proceeding, even in cases pertaining to matrimonial

violence. However, each case has to be assessed on its own factual backdrop.

7. In the instant case, two GD Entries were lodged on the same date, i.e., on 17.10.2017, one by the present petitioner against her in-laws and the other by the present opposite party no. 2/mother-in-law against the petitioner and others. Therefore, the second case i.e., the present case initiated by the opposite party no. 2 cannot at least be brushed aside as an afterthought.

8. Now, it becomes important to find out whether a *prima facie* case is made out in the case at hand. The injury report as contained in the case diary indicates purported commission of at least simple hurt. The versions given by the neighbours as contained in the case diary substantially corroborate this.

9. It may nonetheless be true that the injuries suffered by the victim in the other case may be more serious. However, as submitted on behalf of the State, this alone cannot be a justification for quashing the subsequent proceeding if a *prima facie* case is made out in it.

10. It is needless to say that in the event, two counter cases filed by adverse sides make out *prima facie* cases, respectively and both of them traverse the stage of framing of charge, then they have to be tried together, one after the other.

11. However, so far as the present case is concerned, I do not find any material to attract Section 325 of the Penal Code. The injury report does not

speak of any grievous hurt suffered by the victim. Therefore, the charge under Section 325 of the Penal Code is not even *prima facie* tenable.

12. Even as regards the charge under Section 448 of the Penal Code, the same could have been attracted had outsiders been so charged. But, the wife of the alleged victim/son of opposite party no. 2 who was staying with him at that place cannot be treated as an outsider who could possibly have trespassed into the house. As such, the petitioner cannot be charged even with an offence under Section 448 of the Penal Code.

13. Therefore, the impugned proceeding is quashed as against the present petitioner so far as the charges under Sections 325 and 448 of the Penal Code are concerned.

14. However, since a *prima facie* case appears to have been made out against the petitioner so far as the charge under Section 323 of the Penal Code is concerned, the same is not interfered with at this stage.

15. Accordingly, the application is partly allowed and the impugned proceeding is quashed so far as the charges under Sections 325 and 448 are concerned.

16. Urgent Photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)