

03.03.2021
tkm/ct 35
sl no. 12

C.R.R. 397 of 2015
(Via video conference)

In Re : Manoj Kumar Agarwala & Ors.

.....petitioners

Mr. Debabrata Roy

Ms. Karabi Roy

..... for the petitioners

Mr. S G Mukherjee, Id PP

Ms. Faria Hossain

Ms. Sonali Das

..... for the State

Affidavit of service filed by the petitioners is taken on record. Opposite party no. 2 is not represented despite service of notice upon her. The matter is taken up for hearing even in her absence as it appears that she is not interested in contesting the application.

In the present application under section 482 of the Code of Criminal Procedure the petitioners have sought for quashing of charge sheet no. 651 of 2013 under section 498A/323/506/34 IPC in connection with Ratua P.S case no. 43 of 2013 dated 28.1.2013 pending before the learned Judicial Magistrate, 1st court, Chanchal, Malda.

Petitioners are the husband, father in law, mother in law and married sister in law of the opposite party no. 2 who is the de facto complainant before the trial court. Opposite party no. 2 lodged compliant against the petitioners to the effect that she was married to petitioner no. 1 on 12.2.2010 as per Hindu Law and a child

named Tilok Agarwala was born in the said wedlock. She alleged that after her marriage, her husband disclosed that he had no love and affection for her and tortured her physically and mentally on demand of dowry. She was assaulted on several occasions and the petitioners also attempted to take her life.

Criminal case was registered on the basis of the complaint filed by the opposite party and after completion of investigation, charge sheet was submitted against the petitioners under section 498A/323/506 IPC.

It is submitted on behalf of the petitioners that the petitioners have been falsely implicated in the instant case and no such incident of torture or assault as alleged occurred. Petitioner no. 1 also filed a suit for restitution of conjugal rights with a view to lead a marital life with his wife which was decreed in his favour despite which the opposite party restrained from reuniting with him. No ingredient of offence under section 498A/323 IPC has been made out against the petitioners and allowing the proceeding to continue against them would amount to abuse of the process of court.

Learned Public Prosecutor appearing on behalf of the State opposes the application and produces case diary.

The injury report of the opposite party shows that she did not complain of any trauma or assault before the doctor and the pain and swelling complained of by her cannot be attributed to any act of the petitioners, let alone any kind of assault. The statement of witnesses recorded by the investigating officer in course of

investigation suggests general and omnibus nature of allegations against the members of the matrimonial home of the opposite party. Though some allegation under section 498A IPC can be attributed to petitioner no. 1 who is the husband of the opposite party, there is no prima facie evidence which suggests involvement of the other petitioners in the offence alleged.

Whether allegations under section 498A IPC can be substantiated against petitioner no. 1 is a factual aspect which can be determined only by recording evidence and not in an application under section 482 of the Code.

It is trite law that jurisdiction under section 482 of the Code should be exercised with extreme care, caution and circumspection and should not be made an instrument to axe down a legitimate prosecution. It is only when the court is satisfied that continuation of the proceeding would be an abuse of the process of the court shall the court intervene and quash the proceeding.

In the case in hand, there is no prima facie evidence within the four corners of the case diary which indicates that petitioner nos. 2, 3 and 4 are in any manner connected with the alleged offence and there is no ground for proceeding any further against the said petitioners.

It is pertinent to mention that the complaint was initially registered under section 498A/307/506/34 IPC but on completion of investigation, charge sheet was submitted under section 498A/323/506/34 IPC. Taking into account the contents of the complaint as well as charge sheet, I am of the view that the said

contents do not disclose any offence under section 498A/323/506/34 IPC against petitioner nos. 2, 3 and 4 and continuation of such proceedings against them shall amount to abuse of the process of the court.

However, the allegation against the petitioner no. 1 should be substantiated by way of evidence and this petitioner does not deserve an order of quashing of proceeding in his favour at this stage. He might earn his acquittal in the event allegations are not proved against him.

With the aforesaid observations CRR 397 of 2015 is allowed.

GR case no. 105 of 2013 pending before the learned Judicial Magistrate, 1st Court, Chanchal, Malda arising out of Ratua P.S case no. 43 of 2013 dated 28.1.2013 under sections 498A/307/506/34 IPC in respect of petitioner nos. 2, 3 and 4 is quashed.

Copy of the order be sent to the learned trial court for information and necessary action.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon usual undertaking.

(Suvra Ghosh, J.)