

**In the High Court at Calcutta
Criminal Revisional Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Subhasis Dasgupta.

CRR No. 869 of 2018

With

CRR No. 870 of 2018

With

CRR No. 871 of 2018

Smt. Tania Halder (Mukherjee) & Ors.

Vs.

State of West Bengal & Anr.

For the Petitioners :Mr. Biswajit Hazra, Adv.
Mr. Archisman Sain, Adv.

For Opposite Party :Mr. Anirban Dutta, Adv.
No. 2 Mr. Sachetan Ghosh, Adv.
Mr. Sayantan Sinha, Adv.

For the State :Mr. Swapan Banerjee, Adv.
Mrs. Purnima Ghosh, Adv.

Heard on : 18.01.2021

Judgment on : 23.02.2021

Subhasis Dasgupta, J:-

Three (3) revisional applications, referred above, with a prayer for quashing each of pending proceedings, were heard together, on the prayer of the parties, on the ground that three such cases came to be filed,

following a matrimonial dispute between a married couple namely Smt. Tania Halder (Mukherjee) and her husband Sourav Halder, which was admittedly held on 8th August, 2014.

The revisional application covered in CRR No. 869 of 2018 is relatable to a complaint case No. 50 of 2016, instituted by husband/complainant, Sourav Halder, arraying his wife with six others as accused persons therein, with an allegation of having committed offence, punishable under Sections 325/ 327/ 448/ 379/ 384/ 419/ 497/ 506/ 34 of Indian Penal Code.

Learned Magistrate, Barrackpore by his order dated 24th May 2016, after examination of witnesses under Section 200 Cr. P. C., proceeded to issue process against the accused persons named in the complaint under Sections 379/384/323/497/506/34 of Indian Penal Code. The gist of the allegations raised in the complaint is that Smt. Tania Halder (Mukherjee) soon after marriage developed a habit of leaving her matrimonial home without giving any information to her in law's members including her husband, and ultimately preferred to live apart, leaving permanently her matrimonial home. A matrimonial suit being No. 789 of 2015 then came to be registered at the instance of wife against her husband, which is now pending before the learned Additional District Judge, 3rd Court at Barasat. That on 9th February, 2016, when the matrimonial suit was fixed for hearing at the Barasat Court, the wife outside the court room purposefully threatened the complaint/husband with dire consequence, using abusive languages after having understood the participation of

complainant/husband in the matrimonial proceedings. On the same day, at about 3.30 P.M., the accused/wife being accompanied by her close associates, who are also made co-accused persons, forcibly entered the house of complainant/husband, ransacked his house and finally left the house committed theft of golden ornaments and other valuable securities from the house of the complaint/husband. The wife/accused again appeared in the house of the complainant/husband on 11th February, 2016 and threatened for his alleged purposive participation in the matrimonial suit with dire consequence, after informing that she had then been carrying four (4) months old pregnancy, which was brought about to her by person, other than the complainant/husband.

Almost over the self-same incident, held on 9th February, 2016 as already mentioned, the complainant/husband filed a petition under Section 156(3) Cr.P.C. in the court on 15th February, 2016, i.e. two day's before the date of filing a complaint, covered in CRR No. 869 of 2018.

Subhash Chandra Halder being the father-in-law of his daughter-in-law, Smt. Tania Halder (Mukherjee), submitted a further complaint under Section 156 (3) Cr.P.C. to court, alleging commission of offence by her daughter-in-law with her close associates, who are her father and maternal brother respectively.

The crux of the allegation, so far as raised in the instant petition of complaint under Section 156(3) is that soon after marriage, the daughter-in-law subjected father-in-law, and his family members to torture, ill-treatment etc. rendering their life horrible. Since the complainant/father-

in-law soon after marriage of her daughter-in-law reposed confidence upon his daughter-in-law to deal with the bank accounts held by complainant/father-in-law, the daughter-in-law had the occasion to become acquainted with the bank accounts, held by her father-in-law/complainant. Under the behest of operating bank account, held by complainant/father-in-law, the accused daughter-in-law had misappropriated amount, worth of Rs. 1.5 lakhs, drawing the same from the account of her father-in-law. After misappropriating such money, the daughter-in-law was alleged to have visited Puri with her fiancé for her mutual love relationship.

Upon such factual matrix, those three cases, mentioned above were originated, out of which, two of such cases were originated on the strength of complaint instituted under Section 156(3) Cr.P.C. (as covered in CRR No. 870 of 2018 and CRR. No.871 of 2018, while 3rd case found its existence by complaint.

Mr. Biswajit Hazra representing the petitioners involved in CRR No. 869 of 2018 submitted that allegation raised against the wife/daughter-in-law was not only purposive but manufactured also. It was contended that the continuance of cases instituted against the wife/daughter-in-law and others, either by her husband or by her father-in-law, would be an abuse of the process of court. Grievance was expressed submitting that a daughter-in-law could not be expected to misappropriate money after withdrawing the same from the bank of father-in-law, which is nothing

but contrary to the ordinary course of conduct, and would not be believable version.

Mr. Anirban Dutta, learned advocate for the opposite party No.2 (husband), submitted that the proposed quashment should not be acceded to, on the ground of trial having commenced in two police cases, instituted on police report, pursuant to the complaint submitted under Section 156(3) of Cr.P.C., one by husband and another by father-in-law.

Adverting to a xerox copy of the order passed in CRM No. 8919 of 2015, Mr. Dutta contended that the daughter-in-law using the debit card of her father-in-law had withdrawn a sum of Rs.1.5 lakhs from his account without his knowledge and consent. The wife/daughter-in-law voluntarily made over a demand draft of Rs.1.5 lakhs to her father-in-law/complainant taking receipt therefor, and upon consideration of which the daughter-in-law was granted anticipatory bail, which was sufficient enough to refuse the prayer for quashing.

Learned advocate representing the State producing the copy of memo of evidence submitted that investigation already ended in charge-sheet making out a prima facie case, under Sections 379/420/406/120B/34 of Indian Penal Code so far as the case instituted by father-in-law is concerned. As regards the proposed quashment of two cases, originated under the behest of Section 156(3) Cr.P.C., learned advocate for the State supporting the submission of Mr. Dutta, contended that when there had been already commencement of trial, pursuant to the

submission of the charge-sheet, the proposed quashment should be refused at this stage.

The vibrancy of life having been disturbed for the reasons best known to the married couple involved in this case, there had been institution of multiple cases against each other, apart from pending matrimonial proceedings.

Upon perusal of the materials available in the case record, connected with CRR No. 869 of 2018, it appears that the presence of all the accused person, supposed to be prosecuted, could not be secured uptill now. Since process has not yet been exhausted, so as to secure non-appearing accused persons, the complainant/husband could not move ahead adducing before charge evidence, supportive of prosecution.

As regards the case involved in CRR No. 870 of 2018, police had already submitted charge-sheet on 23rd May, 2017, under Sections 341/323/506 of I.P.C. The Court below upon receipt of the charge-sheet after making due adherence to the provisions of the law, proceeded to fix a date for consideration of the charge. Naturally the charge could not be framed as yet against the accused persons.

So far as the complaint submitted by father-in-law against her daughter-in-law with others is concerned, police concluded the investigation on 19th May, 2017, submitting charge-sheet under Sections 379/ 420/ 406/ 120B/ 34 I.P.C. Charge has already been framed, and till date one witness has been partly examined.

When in two cases covered in CRR No. 870 of 2018 and 871 of 2018 charge-sheet has been submitted collecting prima facie materials, the court is of the view that extraordinary power available under Section 482 Cr.P.C. should not be exercised in this case so as to quash the proposed proceedings merely upon visualizing allegation and counter allegation, raised by the parties to this case against each other.

Though wife/daughter-in-law was granted anticipatory bail upon making voluntary deposit of Rs. 1.5 lakhs to her father-in-law, but the same alone in the absence of any evidence being collected during full trial would be without any consequence at the moment, as such deposit of money was made without prejudice to the rights and contentions of the parties in the matter. Evidence is, therefore, required to be gone into for determination of the offence alleged against the daughter-in-law with others as covered in CRR No. 871 of 2018, which can only be obtained after entering into a trial.

Since a complaint case (as covered in CRR No. 869 of 2018) and another case instituted on police report, (as covered in CRR No. 870 of 2018), are alleged to have been originated over a self-same incident, held on 9th February, 2016, the court cannot be oblivious of the provisions contained in Section 210 Cr.P.C. for consolidation of cases, simply to prevent multiplicity of prosecution.

Section 210 Cr.P.C is mentioned as hereinbelow:-

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.-

(1) When in a case instituted otherwise than on a police report

(hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

In view of such self contained provision available under Section 210(2) Cr.P.C., both the cases covered in CRR No. 869 of 2018 and CRR No. 870 of 2018 may be safely consolidated/clubbed together, as if both the cases were instituted on police report.

The settled proposition is that unless glaring illegality is shown to exist in the institution of a criminal case, the prayer for quashing should not be considered.

As there is nothing convincing supportive of proposed quashment of pending three cases, the prayer for quashing stands dismissed in three such cases for want of merits.

However, the wife/daughter-in-law and co-accused persons involved in CRR No. 869 of 2018 and CRR No. 870 of 2018 are at their liberty to make an application under Section 210 (2) Cr.P.C. for consolidation of two cases referred above, and if any such application is filed, the same shall

be disposed of in accordance with provisions of law, providing sufficient opportunity of hearing to either of the parties to this case.

Since there has already been commencement of trial in two cases, referred in CRR No. 870 of 2018 and CRR No. 871 of 2018, learned court below is directed to expeditiously dispose of the cases so as to reach a logical conclusion, after holding a full trial.

With this observation and direction the three (3) revisional applications stand disposed of.

Department is directed to communicate this order to the concerned Court below without making any delay.

Urgent photostat certified copy of this judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with all necessary formalities.

(Subhasis Dasgupta, J.)