

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA  
Criminal Revisional Jurisdiction  
Appellate Side

Present:  
The Hon'ble Justice Jay Sengupta

C.R.R. 2017 of 2019  
with  
C.R.A.N. 1 of 2021

SHILA SUTRADHAR  
Vs.  
STATE OF WEST BENGAL & ANR.

|                    |   |                                                                       |
|--------------------|---|-----------------------------------------------------------------------|
| For the Petitioner | : | Mr. Supriyo Chattopadhyay<br>Mr. Tapas Sarkar<br>Ms. Saswati Adhikary |
| For the State      | : | Mr. P. K. Dutta<br>Mr. Imran Ali<br>Mr. S. Deb                        |
| For the O.P. No. 2 | : | Mr. Soubhik Mitter                                                    |
| Heard on:          | : | 15 <sup>th</sup> September, 2021                                      |
| Judgment on :      | : | 15 <sup>th</sup> September, 2021                                      |

**The Court:**

This is an application for quashing of a proceeding in respect of New Barrackpore Police Station Case No. 266/2018 pending before the Learned Additional Chief Metropolitan Magistrate, Barrackpore, North 24 Parganas in which a charge sheet was submitted under Sections 498A, 406, 304B read with

Section 34 of the Indian Penal Code and Sections 3, 4 of the Dowry Prohibition Act.

Mr. Chattopadhyay, learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is the mother-in-law of the victim lady while the opposite party no. 2 is the *de facto complainant* / mother of the alleged victim. The incident allegedly took place on 14.10.2018. The petitioner is a government servant. She was travelling from Kolkata to Delhi on a holiday and boarded a train on 13.10.2018. After she received the information about the mishap in the evening of 15.10.2018, she booked an air ticket and came back. Reliance is placed on copies of the railway ticket, the air ticket and the boarding pass. Therefore, the petitioner is taking a plea of alibi that she was not present at the place of occurrence during the incident. That apart, there is exonerative dying declaration made by the victim lady before the Investigating Officer. In that statement she categorically stated that she was not holding any one responsible for her catching fire and that only the husband was present at the house during the incident. Reliance is placed on a decision of the Hon'ble Apex Court in ***Madhavrao Jiwaji Rao Scindia and another etc. vs. Sambhajirao Chandojirao Angre and others etc.*** reported in **AIR 1988 SC 709** and ***State of Karnataka vs. Muniswamy*** and Others reported in **(1977) 2 SCC 699** and it is submitted that if there is any special feature in a case that would make the chance of conviction in a case improbable, then such a special circumstance can be taken into consideration by a Court at the initial stage.

Mr. Ali, learned counsel appearing on behalf of the State submits as follows. The F.I.R. was lodged by the mother of the victim lady. She categorically

stated that after the incident, on 15.10.2018 she and other family members were able to talk to the victim lady and the victim lady categorically stated that she was put on fire by all the accused including the present petitioner. This amounts to a verbal dying declaration which has to be decided during trial. He also refers to the seizure list at page 32 of the case diary and submits that there was a smell of kerosene found in the wearing apparel of the victim seized by the Investigating Officer. The simple story made out of bursting of a gas may not be true. Whether the lady was set on fire by pouring kerosene has to be looked into during trial.

Mr. Mitter, learned counsel appearing on behalf of the de facto complainant / opposite party no. 2 submits as follows. First, the F.I.R. indicates that there was a verbal dying declaration made by the victim lady before mother and the family members. Secondly, the purported dying declaration by the victim lady made before the Investigating Officer has to be tested during trial vis-à-vis the verbal dying declaration and also on the score that the former was made in a printed format. It is quite unheard of that there could be a dying declaration in a particular case in a printed format. Reliance is placed on ***R.P. Kapur vs. The State of Punjab*** reported in ***AIR 1960 SC 866*** and it is submitted that private documents like air ticket and railway ticket cannot be looked into at this stage. An alibi taken up has to be decided during trial. The decisions relied upon by the petitioner have no manner of application in the instant case. The decisions do not at all indicate that an alibi could be tested without a trial or that veracity of one of the two contradictory dying declarations could be decided even before trial. The High Court cannot hold a mini trial in a case that involves disputed questions of fact.

I have heard the learned counsels for the petitioner, the State and the de facto complainant and have perused the revision petition and the case diary.

First, the air ticket and the railway ticket are essentially private documents that cannot be looked into at this stage. Reliance is placed on the decision of the Hon'ble Apex Court passed in the ***State of Orissa vs. Debendra Nath Padhi*** reported on **AIR 2005 SCC 415**.

Even, an alibi can be considered only during trial and not at an earlier stage. On this, reliance is again placed on the decision in Debendra Nath Padhi (supra).

It appears that in the instant case there are at least two dying declarations, one recorded by the Investigating Officer which is, quite surprisingly, in a printed format and the other one allegedly made orally before the mother. The victim lady practically exonerated the present petitioner in the former. The veracity of these two rival dying declarations have to be decided during trial and there is no way that this Court can hold a mini trial to determine the same.

From the F.I.R. another significant fact comes up. The mother of the victim girl alleged that the husband had tried to influence the victim lady after the incident that if she stated about the real facts then there could be problems as regards mediclaim and insurance. This tends to cast a further shadow of doubt on the purported exonerative dying declaration. However, this is again a matter of trial.

The decisions relied on behalf of the petitioner have no particular bearing on the present case. The facts involved and the context are absolutely distinct in these cases.

An alibi based on private documents that can only be decided during trial or a written dying declaration, which is in a printed format and has to be juxtaposed alongside a purported contradictory verbal dying declaration made before the victim's mother and which exercise too can only be done during trial, cannot be termed as a special feature that can be taken into consideration by this Court in a revisional application, even before a full-fledged trial.

In view of the above, I do not find any merit in the revisional application. Accordingly, the same is dismissed.

However, there shall be no order as to costs.

The learned Trial Court shall conclude the proceeding as expeditiously as possible without granting any unnecessary adjournment to any of the parties. The learned Trial Court shall not be swayed by any observations made in this order as the same were meant only for deciding the application for quashing.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

**(Jay Sengupta, J.)**