

16.08.2021
Item no.7 & 8
Ct. No.34
CHC

C.R.R. No.3988 of 2011

(Physical Hearing)

In Re: An application under Section 482 of the Code of Criminal Procedure, 1973.

And

In the matter of:-

Sanju Chand & ors.

... petitioners

with

C.R.R. No.3630 of 2011

In Re: An application under Section 397 read with Sections 401 and 482 of the Code of Criminal Procedure, 1973.

And

In the matter of:-

Smt. Anisha Singh

... petitioner

Ms. Chandreyi Alam

...for the petitioner in CRR 3630 of 2011 and
opposite party no.2 in CRR 3988 of 2011.

Mr. Ayan Bhattacharjee,

Mr. Sharequl Haque,

Mr. Aditya Ratan Tiwary

...for the opposite party nos.1 to 4 in CRR 3630
of 2011 and petitioners in CRR 3988 of 2011

Mr. Saswata Gopal Mukherjee, Ld. P.P.

Mr. Arijit Ganguly,

Mr. Suman De

....for the State

C.R.R.3988 of 2011 and C.R.R.3630 of 2011 are being disposed of by a common order.

The revisional application was preferred by Sanju Chand (husband), V. B. Chand (father-in-law), Shobha Chand (mother-in-law) and Pooja Chand (sister-in-law) against the order dated 30.08.2011, passed by the learned Additional District and Sessions Judge, 9th Fast Track Court, Calcutta, in connection with Criminal Revision No.315 of 2010.

The petitioner in C.R.R.3630 of 2011 who is the de facto complainant of the case has also challenged the order being aggrieved by the deletion of the Sections 494 and 406 of the Indian Penal Code which has been passed by the learned Sessions Judge in the impugned order.

It would be apposite to state that the revisional court was approached by the accused/petitioners against the order dated 11.10.2010, passed by the learned Metropolitan Magistrate, 11th Court, Calcutta, in connection with G.R. Case No.3378 of 2008 is arising out of Hastings Police Station Case No. 244 dated 16.12.2008.

Mr. Mukherji, learned Public Prosecutor has referred to the chargesheet wherein it reflects that the prosecution in order to prove its case has relied upon 14 witnesses.

Ms. Chandreyi Alam, learned advocate appearing for the de facto complainant has drawn the attention of this Court to paragraphs 10(c), 10(h) and 10(q) of the application under Section 156(3) of the Code of Criminal Procedure and submitted that there

are allegations against the petitioner nos.3 and 4, being the mother-in-law and sister-in-law.

On the other hand, Mr. Bhattacharjee, learned advocate appearing for the petitioners submits that the chargesheet and its accompaniment fails to make out any case for continuance of trial before any court of law.

I have perused the statement of the witnesses, which have been recorded by the Investigating Officer in course of investigation as also the other materials, which have been referred to and relied upon by the prosecution. As at this stage, when the learned Magistrate is about to exercise the power under Section 240 of the Code of Criminal Procedure, I restrain myself from expressing regarding the pros and cons of every statement because the same may prejudice the prosecution or the accused persons in course of trial.

I have perused the impugned order dated 30.08.2011, wherein the learned sessions court while exercising its revisional power was pleased to set aside the cognizance so far as Sections 494 and 406 of the Indian Penal Code is concerned.

On an overall assessment of the materials appearing in the record, more particularly, the statements of the witnesses, I am of the view that at least at this stage no case has been made out against the petitioner no.3, Shobha Chand and petitioner no.4, Pooja Chand. The allegations which are reflected in paragraphs 10(c), 10(h) and 10(q) of the application under Section 156(3) of the Code of Criminal Procedure may have moral and civil consequences but are not sufficient enough to attract them in a

court of law to face trial under the charges which have been referred to in the chargesheet. Accordingly, Hastings Police Station Case No.244 dated 16.12.2008 so far as the said petitioners are concerned, are quashed.

Now so far as petitioner no.1, husband and petitioner no.2, father-in-law are concerned, I have perused the nature of allegations and I find that the charges under Sections 498A/406/494/506/120B of the Indian Penal Code and provision of sections 3 and 4 of the Dowry Prohibition Act are applicable to petitioner nos.1 and 2 being the husband and father-in-law.

An argument was raised regarding the applicability of Section 494 of the Indian Penal Code.

However, having regard to the observations made by the Hon'ble Supreme Court in ***Y. Narasimha Rao and others vs. Y. Venkata Lakshmi and another*** reported in **(1991) 3 Supreme Court Cases 451**, I am of the view that same is question of fact which is to be decided in course of the trial and the learned sessions court has prejudged the issue. In fairness of the circumstances, I am of the view that so far as the order of the learned revisional court being the learned Additional District and Sessions Judge, 9th Fast Track Court, Calcutta is concerned, I am inclined to set aside the order dated 30.08.2011 so far as the present petitioners are concerned, learned trial court will frame charges under Sections 498A/406/494/506/120B of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act and proceed with the trial of the case so far as these petitioners are concerned.

Needless to State that this Court has not expressed any opinion regarding the merit of the case, as such, the trial court would independently consider the circumstance and arrive at its own conclusion at the end of trial.

With the aforesaid observations, C.R.R.3988 of 2011 is partly allowed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

Having regard to the peculiar circumstances which arose in this case so far as C.R.R.3988 of 2011 and C.R.R.3630 of 2011 are concerned the following directions are passed:

(i) If in course of trial the original Case Diary is required to be taken into account and as the original Case Diary could not be traced, the copies which have been certified and attested by the Inspector of Police, Kolkata being the Officer-in-Charge, Women Grievance Cell would be treated to be primary evidence in the trial of the case subject to the same being argued at the stage of final argument of the case;

(ii) The petitioner nos.1 and 2 who will be facing trial are residents outside the State of West Bengal. The learned trial court will accept proper affidavit for their exemption and will not insist on their personal appearance except for the purposes of charge, Section 313 of the Code of Criminal Procedure and the date of delivery of judgement;

(iii) Let the date before the learned Metropolitan Magistrate be fixed on 16th of September, 2021, when the Officer-in-Charge, Women's Grievance Cell will be present personally and instruct

the learned Public Prosecutor to take step in this matter. The representative of the petitioner nos.1 and 2 must also be present on that date so that a subsequent convenient date may be fixed by the learned Magistrate for framing of charge.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)