

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.R. 3642 of 2018

With

CRAN 1 of 2019 (Old No. CRAN 2260 of 2019)

Tamal Kanti Das

-vs.-

The State of West Bengal & Anr.

For the Petitioner : Ms. Anasuya Sinha
Ms. Jonaki Saha

For the State : Mr. Madhusudan Sur
Mr. Dipankar Paramanick

For the Opposite Party

No.4 : Mr. Srijib Chakraborty,
Mr. Subhasis Chakraborty
Ms. Susmita Kumari Singh,
Mr. Amit Chowdhury

Heard on : 02.09.2021, 16.09.2021, 17.09.2021 &
28.09.2021

Judgment on : 05.10.2021

Tirthankar Ghosh, J:-

The present revisional application has been preferred challenging the proceedings arising out of MaliPachghora Police Station case no. 38 of 2018 dated 08.03.2018 under Section 498A/304B/34 of the Indian Penal Code and under Section 3/4 of the Dowry Prohibition Act, 1961.

The prosecution case was initiated on the basis of a letter of complaint addressed to the Officer-in-charge MaliPachghora Police Station by one Kajal Saha, mother of the victim (deceased). The allegations made in the said letter of complaint are as follows:-

The complainant's younger daughter Debolina Das was married with One Tushar Kanti Das on 29.01.2016. At the time of marriage as per demand a sum of Rs.5,00,000/- cash, furnitures and others articles were gifted by way of dowry. After few days of marriage the victim was inflicted physical and mental torture for further dowry in the form of cash, however, the victim tolerated the same and stayed at her matrimonial home. The complainant specifically alleged that the physical torture was inflicted by her mother-in-law, and further alleged that the husband and brother-in-law often abused the victim by using derogatory languages and the brother-in-law also used to pass offensive comments. The victim, thereafter, became pregnant and subsequently gave birth to a girl child. After the birth of the girl child the torture upon the victim increased and she was often abused regarding her chastity. The complainant, thereafter paid a sum of Rs.50,000/- with hope that things would normalize, however, the accused persons continued their torture and being unable to tolerate the same, the

victim along with her daughter returned to her paternal home. Often her mother-in-law and husband used to abate her to commit suicide and abused her by saying if she dies they would get their son married for second time. Unable to bear such torture the victim got morally depressed and on 07.03.2018 at about 02.00 pm she committed suicide. The complainant, thereafter, asked the police authorities to take action against the father-in-law, mother-in-law, brother-in-law and the husband of the victim who were responsible for the death of her daughter.

On the basis of such complaint MaliPachghora Police Station case no. 38 of 2018 dated 08.03.2018 was registered for investigation under Section 498A/304B/34 of the Indian Penal Code and under Section 3/4 of the Dowry Prohibition Act. The investigating agency on completion of investigation submitted charge-sheet against all the four accused persons, however, the charges were separate so far the accused persons are concerned. The charge-sheet reflects that charges under Section 498A/304B/34 of IPC and under Section 3/4 of the D.P. Act was filed against Tushar Kanti Das and Taramani Das, on the other hand charges under Section 498A/34 IPC and 3/4 of D.P. Act were brought against Mahadeb Das and Tamal Kanti Das (present petitioner).

The investigating agency in the charge-sheet relied upon 12 witnesses being Kajal Saha (the complainant/mother of the victim), Julie Roy (neighbour of the deceased), Jahar Roy (neighbour of the deceased), Kamal Saha (neighbour of the deceased), Aninda Kishore Poddar (signatory as a witnesses and relation), ASI Somendra Roy of Belur PS; C/1075 Subhash

Chandra Mondal of Belur PS; C/227 Ratan Kr Nayak of MaliPachghora PS, Bimlendu Das, Deputy Magistrate and Deputy Collector, Howrah; Dr. Chitaranjan Bhattacharjee of Howrah Hospital, Subhendu Das , SI Sufi Ashraful Haque, MaliPachghora PS.

The learned Advocate appearing for the petitioner submits that the petitioner presently is working at TEK System Global Services Pvt. Ltd. having its Office at Hyderabad and he is not staying in the State of West Bengal for his career prospects for the last eight to nine years at his residence. In view of the submissions so advanced on behalf of the petitioner the Case Diary was called for to assess the materials appearing against him. Accordingly Mr. Sur, learned Advocate appearing for the State produced the Case Diary.

I have perused the Case Diary and assessed the Statements of Kajal Saha, Julie Roy, Jahar Roy, Kamal Saha and the other witness including, Aninda Kishore Poddar (as his name appeared in the inquest report as a signatory but no statement of the said witness was available). The rest of the witnesses relied upon by the prosecution in its case are police witnesses, doctor and the Magistrate conducting the inquest.

The Case Diary reflected that after the registration of the First Information Report on 08.03.2018 the Investigating Officer on the next day i.e., 09.03.2018 recorded the statement of the aforesaid four witnesses namely, the complainant, Kajal Saha, Julie Roy, Jahar Roy and Kamal Saha.

The statement of Kajal Saha i.e. the complainant has a deviation in respect of the role of the accused persons compared to what she stated in the complaint addressed to the Police Station. In fact the statement under Section 161 of the Code of Criminal Procedure starts with a lament that she could not express everything due to immense grief and she reiterated the facts which happened to her daughter, including infliction of physical and mental torture at the instance of some of the inmates of the matrimonial home. It has been categorically recorded that during the initial days of her marriage she was in fact loved by the members of her matrimonial home, however, the mother-in-law did not provide her adequate food and sometimes even kept the biscuits out of her reach. After three to four months of her marriage her husband Tushar did not provide her with household expenses and insulted the victim. His attitude towards the victim was such that the victim had to leave her matrimonial home and return back to Howrah. Her mother-in-law demanded further money, however, she was unable to afford the same as she was solely dependent on rental income. The husband and his brother took her back to her matrimonial home, thereafter, torture started afresh and became un-bearable and the victim was forced to return to her paternal home. Her husband represented to her that he was joining at a different office at a different place and continued to stay at Howrah and sometimes at Garulia. A daughter was born out of the said wedlock on August, 2017 but Tushar refused to pay any expenses for the mother or the daughter and when questioned regarding such attitude her husband Tushar assaulted the victim which once resulted in bleeding, as the victim was a scissor patient. The victim Debolina

confided regarding the incident to her brother-in-law but the same had no effect. The victim, thereafter, had to reiterate her demand for household expenses but she was assaulted again by her husband. Such incident took place in front of Julie Roy and the complainant. On or about January the complainant borrowed a sum of Rs. 50,000/- and send her daughter and grand-daughter to their house but as soon as she reached torture started, as a result victim Debolina returned to her parental home at Howrah and committed suicide by hanging. The complainant in her statement categorically stated that Tushar and Taramoni Das are responsible for her death and as such they should not be spared.

I have considered the statement of the witnesses Kajal Saha, Julie Roy, Jahar Roy and Kamal Saha which the prosecution has relied upon to prove the charges under Section 498A/304B/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act. On an assessment of the statements so relied upon by the prosecution, I am of the opinion that there are specific allegations of inflicting torture upon the victim/deceased by the husband namely, Tushar Kanti Das and mother-in-law, Taramoni Das as also some allegations against father-in-law, Mahadeb Das (since deceased), however, basic materials for implicating the present petitioner Tamal Kanti Das (brother-in-law) are absent, so far as the materials which have been collected by the Investigating Agency. Needless to state that the charge-sheet was submitted under Section 498A/304B/34 of the IPC and Section 3/4 of Dowry Prohibition Act against Tushar and Taramoni and so far as the

present petitioner is concerned the same is restricted to Section 498A of the Indian Penal Code.

On a complete analysis of the statement of Kajal Saha as also the other witnesses relied upon by the prosecution the mother of the deceased and the complainant of the case, I am of the considered opinion that the petitioner at this stage cannot be asked to face the ordeal of trial.

Accordingly, all further proceeding arising out of the charge-sheet submitted in connection with MaliPachghora Police Station Case No. 38 of 2018 dated 08.03.2018 is hereby quashed, so far as the present petitioner/Tamal Kanti Das is concerned.

However, the learned Trial Court would be at liberty to invoke the provision of Section 319 of the Code of Criminal Procedure in case materials surface against him in course of trial.

Thus, CRR 3642 of 2018 is allowed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

Case diary be returned to the Learned Advocate appearing for the State.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)