

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.R. 3982 of 2016
(Via Video Conference)

Sri Hari Das Adhikary @ Hari Das Adhikari & Ors.

-vs.-

The State of West Bengal & Anr.

For the Petitioners : Mr. B. Bhattacharyya
Mr. Sahid Uddin Ahmed,
Mr. Anupam Bar,

For the State : Mr. Imran Ali,
Mrs. Debjani Sahu

Heard on : 09.09.2021

Judgment on : 27.09.2021

Tirthankar Ghosh, J:-

The present revisional application has been preferred challenging the proceeding in G.R. Case No. 93/2012 arising out of Moyna Police Station Case No. 7/2012 dated January 23, 2012 under Section 498A of the Indian Penal Code, 1860, read with Section 4 of the Dowry Prohibition Act, 1961, pending before the Learned Judicial Magistrate, 1st Court, Tamluk, Purba Medinipur.

The petitioners before this Court are Hari Das Adhikary, Nakul Dasadhikari, Purnima Dasadhikari, Ahalya Dasadhikari, Rashbihari Das Adhikary and Bindubasini Dasadhikary, who are the husband, father-in-law, mother-in-law, grandmother-in-law, younger brother-in-law and sister-in-law respectively of the opposite party No. 2 defacto complainant of the instant case. The petitioners approached this Court at the stage when the Investigating Agency on conclusion of investigation submitted charge-sheet under the aforesaid sections and it has been brought to the notice of this Court that the next date has been fixed for consideration of charge before the Learned Trial Court.

The allegations made in the First Information Report is to the effect that the complainant/opposite party No. 2, namely, Sulata Das Adhikary was married to the petitioner no. 1 on 23.06.2010 according to Hindu rites and customs and as per demand of the inmates of the matrimonial home, cash money along with articles were gifted in the form of dowry. However, the complainant was tortured from the very next day of her marriage and after 10 days of marriage the petitioner No. 1 left for his working place and stopped any communication with her. The complainant further alleged that after her husband left, her father-in-law, mother-in-law, sister-in-law and grandmother-in-law on different pretext inflicted mental torture upon her and prevented her from keeping in touch with her parental home. There was further demand for dowry to the tune of Rs. 50,000/- and the complainant's father being unable to meet such demand resulted in the complainant being physically tortured by the petitioner No. 2, petitioner No. 3 and petitioner

No. 6. Her husband also threatened her and when she became unwell, her brother-in-law took away her mobile phone and as such she was unable to communicate with her parents and when she was able to establish contact with her parents, she was prevented from going to her paternal home. When her father went to her matrimonial home for bringing her, he was tied with a rope. However, at the instance of the neighbours, her father could escape from such harassment. After the said incident on 29.11.2010 her mother-in-law and sister-in-law drove her out of the house. Subsequently, her husband refused to accept and take her back to her matrimonial home. The complainant further states that a mediation was held on or about 28.03.2011. However, the inmates of her matrimonial home refused to accept any terms and her husband asked her to forget regarding the marriage. Lastly, when she informed the incident to the police station on 26.07.2011, her father-in-law expressed his intention that he would make his son understand and take back the complainant so that they can start their life. However, the petitioner No. 2 could not keep his promise. The complainant, therefore, alleged that the Police Authorities should take action against the physical and mental torture being inflicted upon her.

On the basis of such complaint, Moyna Police Station Case No. 7/2012 dated 23.01.2012 was registered for investigation and the Police Authorities on conclusion of investigation submitted charge-sheet before the Learned Court at Tamluk, which is presently proceeding before the Learned Judicial Magistrate, 1st Court, Tamluk. The Investigating Agency in the charge-sheet so submitted, relied upon 10 witnesses to prove its case.

Mr. Bhattacharyya, learned Advocate appearing for the petitioners, submits that the allegation made in the F.I.R., charge-sheet and the materials collected by the Investigating Agency, particularly the statements of the witnesses fails to make out any case under Section 498A of the Indian Penal Code against the present petitioners. Learned Advocate submits that marriage was solemnized on 23rd June, 2010 and the complaint was lodged with the police station on 23rd January, 2012. According to the petitioners, the allegations are vague and the ingredients of the offence are missing. As such the proceedings should not be allowed to continue which are harassing in nature.

Mrs. Debjani Sahu, Learned Advocate, appears for the State and opposes the contentions advanced by Mr. Bhattacharyya, learned Advocate for the petitioners and submits that there are specific allegations against each and every accused who have been charge-sheeted in the instant case. Learned Advocate for the State emphasizes on the statement of the victim lady/ defacto complainant and stressed on the fact that the case must be taken as a whole and in its entirety.

In view of the rival contentions, the case diary was directed to be produced before the Court for appropriate consideration regarding the contentions advanced by both the parties. The charge-sheeted witnesses are Sulata Das Adhikary, complainant; Narayan Ch. Samanta, father of the complainant; Ashok Sen Gupta, a resident of the adjoining village; Gourhari Bera, Member of Mogra Gram Panchayat; Sachindra Nath Bera a resident of the same village of the parental home of the complainant; Nilratan

Bhowmik, a resident of the same village of the parental home of the complainant; Anjali Samanta, mother of the complainant; Amitabha Samanta, brother of the complainant.

I have considered the statements of the aforesaid 8 witnesses and on an assessment of the same, I have found specific allegation and complicity of petitioner No. 1 (Hari Das Adhikary), petitioner No.2 (Nakul Das Adhikari), petitioner No. 3 (Purnima Das Adhikari), petitioner No. 4 (Ahalya Das Adhikari). So far as their complicity is concerned, their role is specifically assigned in the letter of complaint addressed to the Officer-in-Charge of the police station, which includes further demand of dowry, physical and mental torture being inflicted upon her and throwing her out of the residence. So far as petitioner No. 5 (Rashbihari Das Adhikary) is concerned, his role in the petition of complaint was that he had taken away mobile so that the complainant could not communicate with her parents. So far petitioner No. 6 (Bindubasini Das Adhikary) is concerned in the letter of complaint, there is an allegation that she used to physically torture along with the father-in-law and the mother-in-law and she along with her mother-in-law threw her out of the residence. However, the statement under Section 161 of the Code of Criminal Procedure which was recorded by the Investigating Officer of the case the complainant did not state to the Investigating Officer any role of petitioner No. 5 and/or petitioner No.6 i.e. younger brother-in-law and sister-in-law. I have also taken into account the statement of Narayan Ch. Samanta i.e. father of the complainant and I found that the complicity of the petitioner No. 5 and petitioner No. 6 is absent.

The statement of these two witnesses were given primary importance in view of the fact that the complainant was solely present at her matrimonial home and as such she only could have divulged the role played by each and every accused and as the father, according to the complaint, was harassed by the inmates of the matrimonial home, the statement of the father i.e. Narayan Ch. Samanta was taken into consideration.

Having regard to the materials, appearing against the petitioner No. 5 and petitioner No. 6, namely, Rashbihari Das Adhikary and Bindubasini Das Adhikary, I am of the view that at this stage they cannot be asked to face the ordeal of a trial. Accordingly, the proceedings against the petitioner No. 5 and petitioner No. 6 as mentioned above is required to be quashed.

If petitioner No. 5 and petitioner No. 6 are on bail, they should be discharged from the bail bonds.

However, the learned Magistrate would be entitled to invoke the provisions of Section 319 of the Code of Criminal Procedure if subsequently materials surface against them in evidence.

So far as the petitioner No. 1 (Hari Das Adhikary), petitioner No.2 (Nakul Das Adhikari), petitioner No. 3 (Purnima Dasadhikari), petitioner No. 4 (Ahalya Dasadhikari) are concerned, sufficient materials are there against them and they are to face trial so far as the charges which have been levelled against them by the Investigating Agency/prosecution.

With the aforesaid observations, CRR 3982 of 2015 is partly allowed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

The Learned Magistrate is directed to frame charge against the petitioner No. 1, petitioner No. 2, petitioner No. 3 and petitioner No. 4 and proceed with the trial of the case and take the same to its logical conclusion within a reasonable period of time.

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.)