

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

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 71 of 2020

Arun Maji

-vs-

The State of West Bengal & Anr.

For the Petitioner : Mr. Jayanta Narayan Chatterjee
Ms. Pritha Sinha

For the State : Mr. Anwar Hossain
Ms. Sujata Das

For the Opposite Party No.2 : Mr. Sabir Ahmed
Mr. Mujibar Ali Naskar

Heard on : 18.7.2022

Judgment on : 21.07.2022

Ajoy Kumar Mukherjee, J.

1. The present application under Section 482 read with Section 407 of the Code of Criminal Procedure has been directed for quashing of the proceeding being G.R. Case No.1066 of 2019 now pending before the learned Additional Chief Judicial Magistrate, Ghatal arising out of Daspur Police Station Case No.419 of 2019 dated 19.10.2019 under Sections 498A/323/307/406/34 of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act.

2. Dipanwita Patra (Maji) opposite party No.2 herein lodged a written complaint before the Officer-in-Charge, Daspur Police Station on 19.10.2019.

3. The FIR lodged by the defacto complainant, Deepanwita Patra (Maji) dated 19.10.2019 may be summarized as follows:-

- a)** Suppressing earlier marriage and also suppressing the fact that the petitioner herein is a Librarian and not a School Teacher and also suppressing the fact that the first wife of petitioner, Arun Maji lodged criminal case against petitioner and others alleging cruelty, his family members had given marriage of the petitioner with the defacto complainant.
- b)** After marriage, the accused persons started to tease her on the ground that the articles given by way of dowry at the time of marriage were of a very inferior quality. After two months of marriage the accused persons, namely, accused nos.1, 2 and 3 at the instigation of accused nos.7 and 8 created pressure upon the parents of the defacto complainant for transferring all the movable and immovable properties in favour of the present petitioner.
- c)** The accused persons also created pressure upon the parents of the defacto complainant for payment of Rs.2 lakhs more.
- d)** When the defacto complainant wanted to know as to why the actual profession of the petitioner/husband was suppressed at the time of negotiation of marriage, the defacto complainant/opposite party no. 2 herein was assaulted mentally and physically and they also threatened her to kill if she informs the incident to anyone.
- e)** The defacto complainant noticed that the petitioner-husband has got extra marital relationship with accused no.5 and when she raised protest in respect of such illegal relationship, the accused persons

threatened unless she brings Rs.10 lakhs from her parents and unless all the properties of her parents are transferred in favour of the petitioner/husband, she would not be allowed to stay at her matrimonial house.

f) As it was not possible to fulfill the unlawful demand made by the opposite parties, the accused persons used to torture her and did not give her sufficient food for survival and also refused to arrange for her medical treatment, when required.

g) As petitioner could not met their unlawful demands in respect of payment of dowry one day i.e. on 21.10.2018, the petitioner herein tried to strangle her and they had driven her out from her matrimonial home and the defacto complainant finding no other alternative took shelter at her father's house and she was treated at a nursing home from 22.10.2018 to 24.10.2018 and subsequently, again on 25.10.2018 to 31.10.2018 as indoor patient.

h) Subsequently, on 25.8.2019 she was again admitted to the nursing home as she was affected by food poisoning. At that time, the petitioner along with some unknown persons came to that nursing home and abused her with filthy languages. The accused persons came to nursing home on that date in order to kill her but somehow the defacto complainant and her mother could save their life.

4. During investigation police also recorded statements of the witnesses which to some extent corroborates with the statements made in the written complaint. Police also collected medical papers and other connected

documents including some receipts in support of purchase of some articles, by the defacto complainant.

5. Mr. Jayanta Narayan Chatterjee, learned counsel appearing on behalf of the petitioner, submits that the ingredients of the offence punishable under Section 307 of the Indian Penal Code has not been disclosed. Moreover, the matrimonial house of the defacto complainant is within the Kolaghat Police Station whereas the alleged incident took place in the jurisdiction of Purba Medinipur but the instant case was lodged at Daspur Police Station under Paschim Medinipur. Daspur Police Station has no jurisdiction to investigate into the matter or to submit any report.

6. It is further contended that the marriage was registered on 15.4.2018 and the defacto complainant left her matrimonial house on 22.10.2018 and therefore, she stayed at her matrimonial house not more than six months and therefore, the entire allegation is false and frivolous in nature. Accordingly, Mr. Chatterjee submits that even if the allegations made in the FIR are taken at their face value and accepted in their entirety, it does not prima facie constitute any offence or make out any case against the petitioner. The criminal proceeding is maliciously instituted with an ulterior motive and if it is allowed to be continued, it would be an abuse of process of the Court and no useful purpose is likely to be served by allowing the criminal proceeding to continue. Accordingly, Mr. Chatterjee has prayed for quashing the aforesaid proceeding.

7. In this context Mr. Chatterjee has relied upon the decision of ***Preeti Gupta & Anr. Vs. State of Jharkhand & Anr.***, reported in **(2010) 3 C.Cr.LR (SC) 411**.

8. Mr. Sabir Ahmed, learned counsel appearing on behalf of the opposite party no.2, submits that the contents of FIR distinctly discloses offence against the petitioner and moreover, offence under Section 498A is a continuing offence and as such, Ghatal Police Station and Daspur Police Station both have got the jurisdiction to investigate into the case.

9. On this context Mr. Ahmed relied upon case of ***Rupali Devi vs. State of Uttar Pradesh & Ors.***, reported in **(2019) 5 SCC 384** and another **Criminal Appeal No.1387 of 2019 (*Priti Kumari vs. The State of Bihar & Ors.*)**.

10. Mr. Anwar Hossain, learned counsel appearing on behalf of the State, submits that investigation has already been ended in charge-sheet and incriminating materials have been collected by the investigating agency during investigation against the petitioner and at this stage, it would not be proper to quash the proceeding at its threshold, invoking power under Section 482 of the Code of Criminal Procedure.

11. Considered the rival submissions.

12. The parameters of the jurisdiction under Section 482 have been reiterated in a consistent line of authorities and it is well-settled that at this stage when the High Court considers a petition for quashing criminal proceedings under Section 482 of the Code of Criminal Procedure, the allegation in the FIR must be read as they stand and it is only if on the face of the allegations that no offence as alleged has been made out to the report may be justified in exercising to quash.

13. In ***Rajeev Kourav Vs. Baisahab and others*** reported in **(2020) 3 SCC 317**, it was held by the Apex Court:-

“8. It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge-sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.”

14. At this stage, the only question that is required to be decided is whether the allegations made in the FIR discloses cognizable offence or not. After going through the written FIR a detailed recital of the manner in which the defacto complainant/opposite party no.2 was ill treated has been stated and also the pressure created upon her for bringing more dowry has also been described in the complaint. There is clear averment in the complaint with regard to demand of dowry by the petitioner/husband and also ill treatment of the defacto complainant/opposite party no.2 by the petitioner and also commission of act in connection with such payment, which could amount to “cruelty” within the meaning of Section 498A of the Indian Penal Code.

15. The allegations as disclosed in the written complain and also statements as recorded during investigation, will have to be proved and it can only be done in the course of trial. It is wholly unnecessary at this stage to embark upon the appreciation of evidence as regards the scope and ambit of the Court’s power to quash a criminal proceeding. The appreciation even in a summary manner of the averment made in the FIR would not be permissible at this stage of quashing and the allegation stated in the complaint as well as in the statements recorded during investigation will have to be accepted as they

appear on the very face of it and this is the core test that has to be applied for the purpose of disposal of the present application.

16. From a reading of complaint, it cannot be held that even if the allegations are taken as proved no case is made out. There are specific allegations against the present petitioner/accused no.1 for harassing the defacto complainant which forced her to leave the matrimonial home. Even now she continues to be separated from the matrimonial home as she apprehends lack of security and safety and proper environment at her matrimonial home. The question whether the petitioner /husband has, in fact, harassed opposite party no. 2 or treated her with cruelty, is a matter of trial but at this stage, it cannot be said that no offence disclosed from the averments made in the F.I.R. Thus, quashing of proceeding before the trial is not permissible.

17. In this context, it is also to be mentioned that the judgment referred by Mr. Chatterjee in the case of **Preeti Gupta & Anr. (supra)** is not squarely applicable in the present context as in the said case admittedly the accused persons/appellant was not permanent resident and has not been resided with the husband of the victim and accused persons never visited the place where the alleged incident had taken place and they also never resided with the victim or her husband and as such, the implication in the complaint was meant to harass and humiliate the husband's relatives and that was the only basis to file the complaint in the said case against the appellants. This is not so in the present context as I have stated in details that specific allegation has been attributed by the witness during investigation against the present

petitioner who is the husband and specific allegation has been attributed in the written complaint which discloses cognizable offence against the petitioner.

18. In respect of the contention raised by the petitioner that the case is being investigated by a wrong police station and as such, report submitted is not entertainable is not the correct way of interpretation of law. In this context in

Preeti Kumari's case (supra) it has been clearly held by the Apex Court that:-

“16. We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Indian Penal Code.”

19. In this connection in **Rupali Devi (supra)**, it was held that:-

“8. Section 178 creates an exception to the “ordinary rule” engrafted in Section 177 by permitting the courts in another local area where the offence is partly committed to take cognizance. Also if the offence committed in one local area continues in another local area, the courts in the latter place would be competent to take cognizance of the matter. Under Section 179, if by reason of the consequences emanating from a criminal act an offence is occasioned in another jurisdiction, the court in that jurisdiction would also be competent to take cognizance. Thus, if an offence is committed partly in one place and partly in another; or if the offence is a continuing offence or where the consequences of a criminal act result in an offence being committed at another place, the exception to the “ordinary rule” would be attracted and the courts within whose jurisdiction the criminal act is committed will cease to have exclusive jurisdiction to try the offence.”

20. From allegations levelled in the written complain, it appears that the offence of cruelty as alleged is a continuing one and as she has taken

shelter after leaving matrimonial home on account of alleged acts of cruelty committed by petitioner husband at village Tatarkhan under Daspur Police Station, Paschim Medinipur, so it cannot be said that the case has been inquired or investigated by a wrong police station in view of the facts and circumstances of the case.

21. In view of the aforesaid discussion, CRR 71 of 2020 is dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(AJOY KUMAR MUKHERJEE, J.)