

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

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 208 of 2019

Barnali Mukherjee & anr.

-vs-

The State of West Bengal & anr.

For the Petitioners : Mr. Moyukh Mukherjee

For the Opposite Party No.2 : Mr. Soumya Basu Roy Chowdhury

Heard on : 03.08.2022

Judgment on : 10.08.2022

Ajoy Kumar Mukherjee, J.

1. Present application under sections 397/401 read with section 482 of the Code of Criminal Procedure has been preferred for quashing of proceeding being Complaint Case No. C-309/2018 now pending before the Court of the Learned Judicial magistrate, 3rd Court, Sealdah, South 24 Parganas.

2. It has been contended by the petitioner that petitioner No. 1 was married with the opposite party no. 2 for the first time on 10.12.2012. After few days of marriage petitioner No. 1 observed stark difference in the conduct of opposite party no. 2 who also confessed to the petitioner no. 1 herein that he is an alcoholic. He has illicit relationship with other women. In or about June, 2013

she was forced to consume the medicinal pills by the opposite party no. 2 for abortion of the foetus and the petitioner no. 1 was subjected to immense physical and mental agony and petitioner no. 1 got depressed due to forceful abortion. Being unable to cope with the aforesaid tragedy, the petitioner No. 1 requested the opposite party No. 2 for dissolution of marriage and accordingly their matrimonial tie got dissolved by decree of mutual divorce on 20.04.2016.

3. Petitioners further contended that parents of the opposite party no. 2 were the neighbours of the petitioner no. 2 and her husband as they belonged from the same locality and used to meet at short intervals. Thereafter petitioner no. 1 fell into the trap of the assurance given by the opposite party no. 2 and his family . On 19th July 2017, the social marriage of the petitioner no. 1 with opposite party no. 2 again took place for the second time. However after one week of marriage the dreams of the petitioner no. 1, of having a peaceful conjugal life was shattered once again, and the opposite party no. 2 disclosed that the only reason he got married to the petitioner no. 1 for the second time is to teach her a lesson. Thereafter opposite party no. 2 in connivance with his parents started inflicting brutal physical assaults on the petitioner no. 1 and also subjected her immense humiliation. The atrocities made out against the petitioner no. 1 crossed all limits when she was mercilessly assaulted by the opposite party no., 2 and his family members on 19th June, 2018. Petitioner no. 1 at that time somehow managed to escape from her matrimonial house and returned to her parental home. The petitioner

no. 1 was constrained to undergo a medical check-up due to such assault at the NRS medical College Hospital , Kolkata.

4. Further case of petitioners is that Opposite party no. 2 and his family members in an effort to cover up the entire incident lodged a missing diary dated 22.06.2018 with regard to the petitioner no. 1 herein with the Belegghata police station. Subsequently series of cases have been filed against the petitioners.

5. The first case lodged by opposite party no. 2 is the instant criminal proceeding which was initiated on 09.08.2018. Simultaneously on 10.08.2018, the opposite party no. 2 preferred an application under section 13 of the Hindu Marriage Act, 1955, and thereafter on 21.08.2018 mother of the opposite party no. 2 preferred an application under section 12 of the Domestic Violence Act, against the petitioner No. 1.

6. In the instant criminal complaint, opposite party no. 2 alleged that on 19.06.2018 the petitioner no. 1 assaulted opposite party no.2 herein for which he had to undergo medical check-up on 20.06.2018. It is also alleged that he was once again assaulted on 22.06.2018 by the petitioners. On 25.06.2018, opposite party no. 2 gave an intimation to the Belegghata police station about said incident of assault.

7. It is submitted on behalf of petitioner that On the basis of the complaint the learned ACJM, Sealdah, vide order dated 09.08.2018 was pleased to take cognizance of the offence and was pleased to transfer the case to the court of the learned Judicial Magistrate, 3rd Court, Sealdah who failed to take into

consideration that the facts alleged did not constitute the offence and vide order dated 09.08.2018, was pleased to mechanically take cognizance on the petition of complaint. Moreover, on a perusal of the medical report annexed by the opposite party no. 2 to the petition of complaint it becomes clear that the opposite party no. 2 only implicated the petitioner no. 1 before the doctor and no role attributed to the petitioner no. 2 herein. A cock and bull story has been hatched by the opposite party no. 2 herein to hide his own misdeeds. Complainant has also not explained the delay over two months in preferring the instant criminal case.

8. Mr. Mayukh Mukherjee learned advocate on behalf of the petitioners submits that on bare reading of the complaint, it is clear that no allegation has been made out against petitioners herein. It is absolutely strange and patently absurd that the process of criminal litigation has been set in motion against the petitioners herein in such a reckless manner without taking into consideration, the ignominy that the petitioners have to suffer because of the same. The Hon'ble Apex Court has consistently and categorically observed that summoning of an accused in a criminal proceedings is a serious matter and criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. Mr. Mukherjee further submits that the order of the Magistrate summoning the accused must reflect that he applied his mind to the facts of the case and law applicable thereto. The Magistrate has to bear in mind to see that the invocation of section 200 of

the code by a litigant cannot be done to take undue advantage of the criminal court as if somebody is determined to settle the scores. The story loomed large by the opposite party no., 2 suffers from intrinsic hollowness and antagonistic contradictions. The allegations made in the complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach just conclusion that there is sufficient ground for proceeding against the present petitioners.

9. Mr. Mukherjee further submits that in a case like present, where criminal case is lodged clearly with a view to spite the other party because of a private and personal grudge, the court may take a view that it amounts to an abuse of the process of law, if the proceeding is allowed to be continued.

10. Mr. Mukherjee during course of argument has also brought my attention to annexure B-2 which relates to treatment sheet of petitioner no. 1 Barnali Mukherjee, which is dated 21.06.2018, wherein it has been stated in the history of assault, that opposite party no. 2 Prasenjit had assaulted her mercilessly on 19.06.2018 at 12:30hours.

11. Accordingly petitioners contended, when she got assaulted by the opposite party no. 2 on 19.06.2018 at 12:30 hours, then the story set-out by the opposite party no. 2 that he was assaulted at the same time by the petitioner no. 1 is nothing but a cock and bull story. He has further, drawn my attention to the plaint of matrimonial Suit No. 271 of 2018 filed by said husband Prasenjit Dey where he had disclosed that on and from 21.06.2018

the parties started to reside separately and if that be so, the question of assault by petitioner no. 1 on 19.06.2018 is not believable.

12. Mr. Soumya Basu Roy Chowdhury learned counsel appearing on behalf of the opposite party no.2 submits that the contents of the complaint clearly discloses offence under section 323/120B/34 of the IPC and in support of the same he has also filed medical documents wherefrom it is clear that petitioner no.1 accompanied by petitioner no. 2 had assaulted the opposite party no. 2

13. Considered the submissions made by both the parties.

14. From the petition of complaint it appears that complainant/opposite party no.2 has specifically alleged that on 19.06.2018 the accused no. 1 assaulted opposite party no. 2 by fist and blows for which opposite party no. 2 sustained injury in his body and thereafter opposite party no. 2 protested for the same and the petitioner no. 2 herein slapped opposite party no. 2 without any reason. It is further alleged in the complaint that due such assault petitioner suffered bodily pain and as such he was medically examined on 20.06.2018 at NRS Medical College Hospital. In support of the same petitioner filed copy of treatment sheet which goes to show that opposite party no. 2 Prasenjit Dey sustained scratch marked injury on left forearm due to physical assault by his wife on 19.06.2018 at 12:30 P.M. and said treatment sheet was issued by medical officer of NRS Medical College Hospital. It is true that the copy of medical sheet filed by petitioner no.1 Barnali Mukherjee also goes to show that on 19.06.2018 at the same time at 12:30 P.M., she also suffered injury due to physical assault by her husband Prasenjit and accordingly it

prima facie discloses that there might be free fight and for which both the parties sustained injury but on perusal of the contents of the written complaint ,coupled with the copy of the medical paper, it cannot be said that the allegation levelled in the written complaint in respect of which learned Magistrate has taken cognizance does not disclose any offence at all. The content of the complaint as well as the copy of medical document filed in support of the complaint, if taken to be true, it cannot be said it does not disclose any offence. The question whether the opposite no. 2 has in fact been assaulted physically by the petitioners at all is a matter of trial, but at this stage, it cannot be said that no case is made out. Mr. Mukherjee on behalf of petitioners argued that even if any injury is caused to opposite no. 2, that might have caused due to self defence on the part of petitioners. Even if such plea wanted to be agitated by petitioners by way of defence, then also parties required to undergo trial. It is well settled that at the stage when the High Court considers a petitioners for quashing criminal proceeding under section 482 of the Cr.P.C., the allegations in the complaint 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, that the court may be justified in exercising it's jurisdiction to quash, but if a *prima facie* case is made out from complaint disclosing the ingredients of the offence alleged against the accused persons, the court cannot quash a criminal proceeding invoking power under section 482 of the code of criminal procedure.

15. In view of above and also considering the settled position of law, I find that this is not a fit case where proceeding can be quashed invoking the power under section 482 of the code.

16. CRR 208 of 2019 is accordingly dismissed.

However, there will 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.)