

CRR 497 of 2020

In the matter of : Rajib Bhattacharjee & Anr.
.....Petitioners

Mr. Susnigdh Bhattacharyya ...for the Petitioners

Mr. Prasun Kumar Dutta, Ld. APP

Md. Kutubuddin

Mr. Santanu Deb Royfor the State

Present revisional application has been directed with a prayer to quash impugned proceeding being G.R. Case No. 6153 of 2019 in connection with Baruipur Women P.S. Case No. 33/19 dated 11.09.2019 under section 493/494/495/419/34 of the Indian Penal code pending before learned Additional Chief Judicial Magistrate, Baruipur.

Before the present proceeding complainant earlier started G.R. Case No. 6102/2019 alleging that on 10.5.2006, the petitioner No.1 was married with the defacto-complainant/opposite party No.2 and after the said wedlock they were blessed with a female baby. But after one year of marriage, the petitioner No.1 all on a sudden left them without informing anybody. Subsequently, it came to the notice that the petitioner no. 1 was staying at Durgapur with his first wife. In the year 2009, one day when the petitioner No.1 came to meet with the defacto-complainant the defacto-complainant was being threatened by the petitioner no. 1.

Said earlier First Information report was lodged against the petitioners on 4.9.2019 vide abovementioned GR case no. 6102 of 2019 in connection with Baruipur Police Station case no. 2026 of 2019 dated 4.9.2019 under Sections 498A/34 of the Indian Penal Code and investigation started against the petitioners which is pending before the learned additional Chief Judicial Magistrate, Baruipur, South 24 Parganas but on the basis of same occurrence the defacto-complainant again has initiated present subsequent proceeding under different sections on 11.09.2019 and as such two criminal proceedings against the present petitioners vide GR case no. 6153 of 2019 under Sections 493/494/495/419/34 of the Indian Penal Code and G.R. Case No. 6102 of 2019 under section 498A/34 of the code are proceeding simultaneously in connection with same incident and both are pending before the learned Additional Chief Judicial Magistrate, Baruipur.

Learned advocate for the petitioners Mr. Bhattacharya submits that alleged incident of torture took place in the year 2009 whereas both the complaints were lodged to the same police station in 2019. No reasonable and believable explanation has been stated for the said delay and in order to harass the petitioners, several criminal proceedings have been initiated by opposite party no. 2. Accordingly, running two simultaneous proceeding in connection with same incident is bad in law and therefore prayed for quashing for later proceeding being GR case no. 6153 of 2019 in connection with Baruipur Women Police Station case no. 33 of 2019 dated 11.9.2019.

Mr. Dutta on behalf of state submits that two parallel proceedings are now proceeding under the same police station.

The legality of the second FIR was extensively discussed by Apex Court in **T.T. Antony v. State of Kerala**. The test which should be applied is the test of sameness which means that unless in both the two cases, where the first and second FIR is registered respectively, the FIRs appear to be substantially different from each other such as in facts and circumstances, the second FIR cannot be filed. This means that the facts and circumstances giving rise to the two FIRs must be different, or the offence committed in the two must be different, or the person accused of committing the offence is different. Only then, the second FIR is permissible.

In cases where the second FIR is filed in the commission of the same offence, the second FIR is liable to be quashed through the test of sameness. This situation will lead to a case of double jeopardy under Article 20(2) of the Constitution which prohibits the prosecution of a person twice for the same offence.

But at the same time the test of consequence is also to be applied in cases where the offence disclosed in the first FIR is not the same as the offence disclosed in the second FIR. In this case, a second FIR is permissible.

Here in the present case, G.R. Case No. 61 of 2019 in connection with Baruipur P.S. Case No. 2026 of 2019 dated 04.09.2019 was started under sections 498/34 on the allegation of subjecting her cruelty by the husband and relatives of

husband. On the contrary present proceeding being G.R. Case No. 6153 of 2019 has been commenced on the basis of Baruipur Women P.S. Case No. 33/19 dated 11.09.2019 under sections 493/494/495/419/34 of the Indian Penal Code with specific allegation that she received one document on 02.08.2019 registered from Durgapur court, wherefrom she came to know that her husband suppressing his earlier marriage with one lady, (which marriage is still subsisting and are blessed with two children by that marriage), published advertisement in matrimonial column of a daily newspaper and got married with the present opposite party No. 2 and as such opposite party No. 2 in the present case has prosecuted petitioners including petitioner No.1 for marrying again during life time of first wife, cohabitation caused by petitioner No. 1 deceitfully inducing opposite party No. 2 a belief of lawful marriage, concealment of former marriage to opposite party No. 2 and also for cheating opposite party No. 2 by the petitioner.

Accordingly applying the “theory of sameness” it appears that G.R. Case No. 6102 of 2019 and G.R. Case No. 6153 of 2019 under same police station are substantially different from each other in facts and circumstances. In other words the facts and circumstances which gives rise to the present proceeding is not alleged “cruelty” but on the grounds of cheating, concealment of earlier marriage, bigamy, deceitful cohabitation with opposite party No. 2 etc.

Applying the test of consequence, it again appears that the offence disclosed in the first First Information Report is not the same with the offence disclosed in the present proceeding.

In view of aforesaid facts and circumstances of the case, the preset revisional application is disposed of only with a direction upon the learned Additional Chief Judicial Magistrate, Baruipur, South 24 Parganas that after completion of investigation in the event a prayer is made by the petitioner for joinder of charges, (if any) that may be disposed of by the Magistrate in accordance with the provisions under chapter XVII of the Code of Criminal Procedure.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities. Appointment of learned advocates appearing for the state may be regularized.

(Ajoy Kumar Mukherjee, J.)