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June 15,
2022
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C.R.R. No.708 of 2022

In Re: A petition under Section 482 of the Code of Criminal Procedure,
1973;

Santanu Dhar Chowdhury
Versus
The State of West Bengal & Anr.

Mr. Ajoy Debnath,
Mr. Devranjan Das.
...for the petitioner.

Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Imran Ali,
Ms. Debjani Sahu.
...for the State.

Learned advocate for the petitioner submits that the address which has been provided in the FIR is completely wrong and on such misconceptual information, the police authorities registered a case under Sections 498A/323/307/506 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

Learned advocate also submits that there are no allegations under Section 307 of the Indian Penal Code and the said Section has been inserted in the FIR for preventing issuance of Section 41A of the Code of Criminal Procedure which is applicable in cases of prescribed punishment up to seven years.

Learned advocate relies upon the judgment of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.** reported in **1992 Supp (1) SCC 335**. Learned advocate relies upon all the parameters which have been provided in paragraph 102 and emphasized on Clause 7

of the said paragraph.

Learned advocate also relies upon the judgment of **Arnesh Kumar Vs. State of Bihar & Anr.** reported in **(2014) 8 SCC 273.**

Learned advocate also relies upon the judgment of **Gurbaksh Singh Sibbia Vs. State of Punjab** reported in **(1980) 2 SCC 655.**

I have considered the submissions advanced by the learned advocate appearing for the petitioner. The applicability of the said judgments are to be tested on the factual matrix of each and every case.

In the letter of complaint addressed to the Officer-in-Charge, there are allegations by the wife regarding the physical torture being inflicted upon her as well as a demand of Rs.4,00,000/-. The said allegations satisfy the basic criteria of Section 498A of the Indian Penal Code. So far as the other Sections are concerned, the investigation of the case is in progress and the police would in course of investigation unearth the truth associated with the allegations. The High Court has to come to a finding regarding the parameters pronounced in the case of **Bhajan Lal** (supra).

The emphasis of the petitioner that the instant case was maliciously initiated with an ulterior motive for wrecking vengeance because of private and personal grudge is not applicable in a case of matrimonial dispute regarding the foundation of wrecking vengeance.

The case is at the stage of investigation. Collection of material evidence is in progress by the police authorities. The truth or falsity of the allegations at this stage cannot be gone into by the court. The genuineness in respect of the FIR is to be tested by the Investigating Agency. No unimpeachable document has been produced before this Court to challenge the authenticity of the First Information Report. Further, a Division Bench of this Court has rejected the prayer for anticipatory bail, which qualifies the requirement of custodial interrogation of the present petitioner.

Under such circumstances, I am of the view that non-production of the case diary before this Court for testing the progress of the case is unwarranted when the basic subject matter of challenge before this Court is regarding the maintainability of the FIR. I hold that the FIR so registered with the jurisdictional police station is maintainable. The applicability of the sections would be a final conclusion which the police authorities would arrive at the conclusion of investigation and while submitting their report under Section 173 of the Code of Criminal Procedure. No interference is called for.

Accordingly, CRR 708 of 2022 is dismissed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

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

(Tirthankar Ghosh, J.)

