

20.09.2022

Item No.58
Ct.No.34
dc.

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

C.R.R. 825 of 2021

**Rajina Kayal @ Rojina Kayal & Anr.
versus
The State of West Bengal & Anr.**

In Re: An Application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973.

Ms. Aiswarya Gupta,
Mr. Kuntal Ray

... For the Petitioners.

Mr. Binay Panda,
Mr. Subham Bhakat

... For the State.

Learned advocate appearing for the petitioners points out that the Investigating Officer of the case while submitting charge-sheet has categorically observed that the offences under Sections 498A/306/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act were applicable to Hasanur Kayal and Fatenur Kayal. So far as the present petitioners are concerned, it has been categorically quoted in the charge-sheet that the Sections which are applicable to Rojina Kayal and Sajeda Kayal are under Sections 498A/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

The learned Magistrate while taking cognisance of the offences has uniformly and unilaterally applied Sections 498A/306/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act against all the accused persons including the present petitioners which was never the contentions of the investigating agency.

Learned advocate for the petitioners submits that there are no speaking orders to the effect at the stage of taking cognisance as to whether a difference of opinion arose between the investigating officer and the learned Magistrate so far as the materials are concerned.

Be that as it may, I am of the opinion that the applicability of the Sections of the Indian Penal Code and the other Acts would be considered by the learned trial court at the stage of consideration of charges. So far as the present case is concerned, two of the accused have been called upon to face charges which are to be tried by the learned sessions court and two of the accused have been called upon to face charges which are Magistrate triable. Now as all the accused are to be tried in the same trial, whole of the case is to be committed to the court of sessions which would include the Magistrate triable offences also.

However, having regard to the fact that the petitioners viz., Rajina Kayal @ Rojina Kayal and Sajda Kayal are ladies and the materials appearing against them as complained by the Investigating Officer are Magistrate triable, the warrant of arrest so issued is stayed till 10.11.2022. The petitioners are directed to appear and surrender before the learned Additional Chief Judicial Magistrate, Uluberia, Howrah within the said period. Their prayer for bail would be considered in accordance with law.

In case, the petitioners do not appear within 10.11.2022, the learned Additional Chief Judicial Magistrate,

Uluberia, Howrah on 11.11.2022 would exhaust harsher process of law to be executed by the concerned officer of police.

With the aforesaid observations, the revisional application being CRR 825 of 2021 is disposed of.

All pending connected applications, if any, are consequently disposed of.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)