

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

Before:

The Hon'ble Justice Ananda Kumar Mukherjee

C.R.R. 1114 of 2010

Malancha Mohinta

-Vs-

Dipak Mohinta

For the Petitioners:

Mrs. Subhasree Patel, Adv.
Mr. Rupraj Banerjee, Adv.

For the Opposite Party:

Mr. Jayanta Narayan Chatterjee, Adv.
Mr. Apalak Basu, Adv.
Ms. Moumita Pandit, Adv.
Mr. Supreem Naskar, Adv.
Ms. Jayashree Patra, Adv.
Ms. Subhadeep Koley, Adv.

Heard on :

15.02.2022 .

Judgment on:

23.03.2022.

Ananda Kumar Mukherjee, J. :-

1. This revisional application under section 482 of the Code of Criminal Procedure, 1973 is a fall out of a matrimonial discord between the petitioner and the opposite party. The petitioner/wife by filling this application under section 482 has sought for quashing of the proceeding in Case No. AC 968 of 2009 (TR No. 225 of 2009) under section 500 of the Indian Penal Code, filed by

the opposite party against the petitioner, now pending before learned Judicial Magistrate 9th Court, Alipore, South 24 Parganas.

2. A synoptical resume of petitioner's case is that, the petitioner got married to the opposite party on 29.11.1990 according to Hindu Rights and Customs. Soon after the marriage the opposite party subjected the petitioner to physical and mental torture on the demand of dowry from her paternal house. On 15.11.1994 petitioner gave birth to a female child. She made constant effort to adjust with the opposite party to maintain a peaceful conjugal life but the opposite party continued to torture her and on 25.04.1997 the petitioner along with her minor child were driven out from her matrimonial home on being abused and assaulted by the opposite party and his elder brother.

3. The petitioner lodged a written complaint on 25.04.1997 before the Office-in-Charge at Behala Police Station which was registered as Behala Police Station Case No. 248 (4) 1997, under section 498A of the Indian Penal Code. In connection with the said case opposite party was arrested on 27.04.1997. On completion of investigation police submitted charge sheet No. 105 dated 04.06.1997 against the opposite party/husband and his elder brother. Learned Sub Divisional Judicial Magistrate at Alipore took cognizance of the offence and transferred the case to the learned Judicial Magistrate 9th Court, Alipore.

4. In the meantime, the opposite party filed a suit against the petitioner under section 9 of the Hindu Marriage Act, praying for a decree of restitution of conjugal rights. Subsequently, opposite party amended the prayer and sought for a decree of divorce against the petitioner under section 13(1)(ia) and

13(1)(ib) of the Hindu Marriage Act, pending before learned Additional District Judge, 1st Track Court to South 24 Parganas. It is the further case of the petitioner that on 16.04.2007 the Matrimonial Suit No. 18 of 2006 was dismissed with an observation that the opposite party cannot be permitted to take advantage of his own wrong, causing serious disruption in the matrimonial relationship and was not entitled to a decree of divorce.

5. The actual dispute in this revisional application stems from a letter dated 14.05.1997, written by the petitioner to the Manager, Indian Overseas Bank, 195/4, Rash Behari Avenue, Kolkata-700029, to intimate him that the petitioner, a legally married wife of the opposite party who is an Assistant Manager of Overseas Bank at Ballygunge Branch has tortured her and driven her out from the matrimonial home and furthermore a criminal case has been initiated against the opposite party in which the opposite party had been arrested and subsequently released on bail. The petitioner requested the Manager to take necessary action in this matter.

6. In the criminal case under section 498A of the Indian Penal Code, bearing BGR No. 1641 of 1997 the petitioner, accused opposite party and his brother filed a joint petition on 16.06.2008 wherein she stated that she was willing to withdraw the aforesaid case against the opposite party and his brother due to intervention of common friends, relatives and well wishers and in the interest and welfare of the minor daughter. In the criminal proceeding learned Judicial Magistrate examined the petitioner and passed a judgment on

18.09.2008 finding the accused persons not guilty of the offence punishable under section 498A of the Indian Penal Code and acquitted them.

7. After disposal of the criminal case, leading to the acquittal on the basis of such impression created by the petitioner, opposite party issued a letter through his advocate dated 23.02.2009 requesting the petitioner to withdraw the letter written by her to the Manager, Indian Overseas Bank dated 24.05.1997 within 15 days from receipt of the letter. On 09.03.2009 the petitioner replied to the advocate's letter through a letter issued by her advocate denying and disputing the averment made by the opposite party in his letter dated 23.02.2009. The opposite party then filed a complaint under section 200 of the Code of Criminal Procedure against the petitioner, alleging that by such letter the petitioner defamed him and committed an offence punishable under section 500 of the Indian Penal Code. The complaint was registered as AC Case No. 968 of 2009. Learned Chief Judicial Magistrate, Alipore transferred the case to the learned Judicial Magistrate, 9th Court, Alipore. In his complaint the opposite party has contended that the letter issued by the petitioner addressed to the Manager of Overseas Bank underwent wide circulation at his place of work and the opposite party has suffered substantially in his career and was denied departmental examination for promotion to higher posts and the same has injured his reputation due to the aspersions thrown on his character and thereby lowered his status in the esteem of the society, though the opposite party was found not guilty of the offence.

8. According to the petitioner the opposite party and one witness have been examined under section 200 of the Cr. P.C in the impugned proceeding and after taking cognizance, on 24.12.2009 learned Magistrate has issued process against the petitioner for offence under section 500 of the Indian Penal Code, directing her to appear before the Court.

9. Being aggrieved and dissatisfied with the impugned proceeding, the present application has been filed, praying for quashing of the same on the grounds inter alia, that learned Magistrate has illegally taken cognizance of the offence, permitting continuance of the proceedings which is barred by limitation under section 468 of the Code of Criminal Procedure. It is the further case of the petitioner that learned Magistrate exceeded his jurisdiction by taking cognizance of the offence and issuing process against her in respect of an alleged offence more than 12 years prior to the date to the taking cognizance, though it is barred under section 468 (2)(c) of the Code of Criminal Procedure. Other relevant grounds assailing the proceeding are that any imputation made in good faith by person to any of those persons who have lawful authority over the person with respect to the subject matter of accusation or for protection of his or her other interest does not constitute the offence. The petitioner asserted that apart from being barred by limitation, the 5th, 8th, and 9th exception to section 499 of the Indian Penal Code if taken into consideration, would not justify continuance of a criminal proceeding against the petitioner under section 500 of the Indian Penal Code. On such grounds the petitioner has prayed for quashing the impugned proceeding.

10. Learned advocate for the petitioner argued that the petitioner was subjected to physical and mental torture by the opposite party and her brother and was finally driven out from her matrimonial home along with her minor daughter. Due to such torture and demand of dowry the petitioner was compelled to lodge an FIR against the opposite party and his brother before Behala Police Station. The said case was subsequently disposed of on the basis of a joint petition for withdrawing the case, resulting in acquittal of the opposite party and his brother who received the benefit of doubt. It is urged that the complaint case filed by the opposite party against the petitioner twelve years after issuance of the letter to his superior officer is barred by limitation. Further contention of the petitioner is that communication made by the petitioner in the impugned letter was in good faith and such imputations cannot attract the offence under section 500 of the Indian Penal Code. Learned advocate for the petitioner in support of her argument relied upon a decision in the case of **Surinder Mohan Vikal Vs. Ascharaj Lal Chopra; 1978 Supreme Court Cases (Cri) 215**, wherein the Hon'ble Supreme Court held, "According to the complaint, the offence under section 500 IPC was committed on March 15, 1972, which was the date of offence within the meaning of section 469 (1)(a) of the Code, and the period of three year's limitation would be calculated with reference to the date for purposes of the bar provided by section 468. But the complaint under section 500 IPC was filed on February 11, 1976, much after the expiry of that period. It was therefore not permissible for the court of the Magistrate to take cognizance of the offence after expiry of the period of

limitation". Learned advocate for the petitioner also relied upon a judgment passed by a Learned Single Bench of this Court in CRR No. 563 of 2015 in the case of **Rabindra Nath Pal Vs. Ratikanta Paul and Ors.** wherein learned court held that the cause of action arose from the date when First Information Report was registered and not from the date on which the complainant was acquitted from the charge. It was further held that a time barred complaint/proceeding cannot be allowed to continue as it would amount to an abuse of the process of court. Learned advocate for the petitioner urged that the impugned proceeding should be quashed as it is a time barred proceeding and any continuance of the same would amount to abuse of the process of court and contrary to the law.

11. Mr. Chatterjee, learned advocate for the opposite party controverting the argument advanced on behalf of the petitioner urged that the offence committed by the petitioner by issuing letter dated 24.05.1997 address to the Manager, Indian Overseas Bank has made some imputations against the opposite party which resulted in lowering his dignity in the esteem of society and defamed him by disclosing that he was arrested in connection with a case, when the entire allegation made against him was out and out false and he was ultimately acquitted from all the charges leveled against him. It is contended that such representations made by the petitioner to his official superior was with an intention to cause harm to his reputation and for such reason he has been deprived from his promotion in the service. The second limb of Mr. Chatterjee's

argument is that the offence committed by the petitioner is a continuing offence and the same cannot be barred by limitation.

12. In support of his argument learned advocate for the opposite party relied upon a decision in the case of **Vanka Radhamonohori V. Vanka Venkata Reddy and others; (1993) 3 Supreme Court Case 4**. In the said case the question of Bar of limitation in taking cognizance of offence was raised under section 468 of Cr. P.C. Hon'ble Apex Court therein held that allegation regarding "Matrimonial Offences relating to cruelty of husband on wife are in the nature of the continuing offences to which bar of section 468 cannot be applied in the interest of justice". The fact situation of the case was that the wife leaving her matrimonial house in 1985 filed a complaint in 1990 alleging maltreatment, torture and harassment for dowry by her husband and mother-in-law and remarriage by the husband in 1990. In that case cognizance of offence under section 498A and 494 IPC was taken by the Magistrate. A petition under section 482 was filed by the husband for quashing the criminal proceeding against him. In that proceeding the High Court, took a view that cognizance of offence under section 498A of IPC was barred under section 468 and quash the entire proceeding on that ground under section 482. The matter went up before the Hon'ble Supreme Court and in the Appeal against the order passed by the High Court, Hon'ble Supreme Court held that "in view of the allegation regarding the second marriage by the respondent during continuance of the first marriage, prima facie an offence under section 494 IPC was disclosed in the complaint and there was no question of section 468 of Cr.

P.C being applicable to an offence under section 494 of IPC as the punishment is for a term extending up to seven years. But nothing has been said by the High Court in respect of the offence under section 494 IPC. Even in respect of the allegation regarding the offence under section 498-A IPC, the attention of the High Court was not drawn to section 473 Cr. P.C. In view of the allegations that the complainant was being subjected to cruelty by the respondent, the High Court should have held that it was in the interest of justice to take cognizance even of the offence under section 498A IPC ignoring the bar under section 468 IPC. Therefore, the order of the High Court has to be set aside.”

13. Learned advocate for the opposite party contended that the offence committed by the petitioner is an offence of continuing nature, therefore, learned Magistrate committed no error in taking cognizance of the offence and issuing summons to the accused petitioner. It is urged that the application under section 482 of Cr. P.C is devoid of merit and the same is liable to be dismissed.

14. I have considered the rival contentions of the parties before the court. Undisputedly the petitioner issued a letter on 24.05.1997 address to the Manager of the Overseas Bank, in which her husband was an employee. In her letter she disclosed that she is the legally married wife of the opposite party and her husband subjected her to torture. She was severely beaten with iron rod on 25.04.1997 and driven out from the house with her minor daughter by her husband and his brother. For such act of the opposite party she lodged a written complaint which gave rise to Behala Police Station Case No. 248 dated

25.04.1997. Her husband and his elder brother were arrested in connection with the case and were in jail custody till 12.05.1997 and were granted bail in Mis Case No. 1744 of 1997. She also enclosed certified copy of order and requested the Manager to take such action as may be deemed fit under the facts and circumstances.

15. The offence of defamation, which is the subject matter of discussion herein has been defined in section 499 of the Indian Penal Code as follows:

“Defamation- whoever, by words either spoken or intended to read, or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the case hereinafter expected, to defame the person.”

16. The petitioner in her letter made representation of facts which were consistent with the incidents relating to filling of cases and arrest of the opposite party in connection with a case of alleged torture. There was no embellishment of facts relating litigation nor did she seek any coercive action against the opposite party. The representation made in the letter had been fortified by copies of orders passed by court from time to time.

17. Without going into the merits of the complaint lodged by the petitioner against her husband and his elder brother, the circumstances which have given rise to the case would reveal that there was matrimonial discord between the petitioner and the opposite party to such an extent that the wife was compelled to leave her husband's home with her minor daughter. This incident

itself would heap insult and indignation upon a married lady having a child. Under such oppressive conditions it is only obvious that the petitioner would take recourse to writing such letter to Official Heads of the opposite party. The petitioner wife cannot be faulted for taking recourse to law of the land for protection of herself and her daughter. She should have her right to ventilate her grievance as her human dignity was at peril.

18. Compassion and good sense prevailed over the petitioner when after such alleged treatments meted out to her, she did not hesitate to file a joint petition along with her husband and his elder brother, praying for withdrawing the case. The opposite party accepted the benefit as a better option. The offence disclosed under section 498A of IPC is not compoundable under the law as such what followed thereafter is that the petitioner did not lead evidence against her husband and his brother to corroborate her statement in the complaint. This resulted in acquittal of the opposite party and in legal parlance, benefit of doubt was extended to the opposite party for such acquittal. There remains little to be said that the letter in question was a statement of fact instead of any imputation to harm the reputation of the opposite party.

19. Even if for argument's sake it is assumed that the petitioner issued such a letter with any malafide intention to disgrace the opposite party by such opprobrium, it needs to be borne in mind that the letter was issued on 24.05.1997 and the complaint has been filed by the opposite party against the

petitioner under section 500 IPC only on 08.06.2009, that is long twelve years after the cause of action arose.

20. Learned advocate for the petitioner has strongly asserted that whatever representation was made by the petitioner in her letter, they would not be covered by the definition of the offence of defamation laid down in section 499 of the Indian Penal Code as they have been excepted under the 5th, 8th and 9th exceptions. It appears from the 5th exception that any representation would not amount to a defamation if any opinion is expressed on the merit of any case civil or criminal in good faith which has been decided by court of justice in respect of the conduct of a person. In the instant case on the basis of the material available in the Case Diary the bail of the opposite party was rejected by the court. Therefore, subsequent acquittal of the opposite party cannot undo his arrest and his released on bail by the court, therefore such representation when made in the letter would be covered by the 5th exception of section 499 of IPC.

21. Furthermore, preferring an accusation against any person to any of the persons who have lawful authority over that person, would not amount to defamation. In the instant case the petitioner wife made accusation against the opposite party before his superior in office in good faith and consistent to her accusation made in the petition of complaint. Therefore, the same would not amount to any defamation as the same is excepted in the 8th exception. It is an all pervasive fact that any imputation of representation made by person in good faith for protecting his own interest would not amount to a defamation. The 9th

exception of section 499 of IPC ultimately lays emphasis upon statement made in good faith. Therefore, the ingredients of offence of defamation are not attracted by the contents of the letter as they are within the ambit of the exceptions laid down under section 499 of IPC.

22. The other contention of the petitioner is that if the impugned letter constituted any offence under section 500 of IPC, the same is barred by limitation as the date of offence should be construed from the date of issuing the letter, that is on 24.05.1997. In my considered view the provision under section 469 (1)(a) of the Code of Criminal Procedure lays down that the period of limitation for taking cognizance in an offence under section 500 of IPC is three years from the date of its initiation. The argument on behalf of the petitioner therefore appears to be forfeited by the decision in the case of **Surinder Mohan Vikal Vs. Ascharaj Lal Chopra; 1978 Supreme Court Cases (Cri) 215**, wherein it has been held that in a case under section 500 IPC the period of three years' limitation would be calculated with reference to the date for purposes of the bar provided by section 468 of Cr. P.C, when the complaint was filed much after the expiry of that period, it was not permissible for the court of the Magistrate to take cognizance of the offence after expiry of the period of limitation. In the case of **Naresh Chand Jain Vs. State of U.P and others; 1991 Cri.L.J. 1888 (All)**, it was further held that the starting point of limitation for filing a complaint for defamation is the date of publication and within three years thereof. The aforesaid decisions on the point of computation of period of limitation along with the decision of a learned Single Bench of this

Court in **Rabindra Nath Pal Vs. Ratikanta Paul & others (CRR No. 563 of 2015)**, the question of limitation for filing a case for the offence of defamation has been put to rest, where it has been laid down that the same should be filed within three years from the date of publication. Accordingly, the complaint filed under section 200 Cr. P.C by the opposite party on 08.06.2009 alleging the offence of defamation committed by his wife by her letter dated 24.05.1997 is barred by the law of limitation under section 468 of Cr. P.C.

23. It is worthwhile to refer to the decision relied on behalf of the opposite party in the case of Vanka Radhamonohari. In the said case the fact situations disclose that the same was relating to a matrimonial offence under section 498A and 494 of IPC which are continuing offences under section 473 of Cr. P.C. therefore, the period of limitation for such offences are not the same as the period of limitation for taking cognizance of the alleged offence under section 500 of IPC. The ratio of the decision of the Hon'ble Supreme Court, laid down in the case of **Vanka Radhamohonari Vanka Venkata Reddy and others; (1993) 3 SCC 4** is distinguishable from the present case and the same period of limitation is not found applicable to the instant case.

24. On the basis of the foregoing discussion I hold that the impugned proceeding in Case No. AC 968 of 2009, now pending before learned Judicial Magistrate 9th Court, Alipore is barred by limitation and therefore continuance of such proceeding which is not legally tenable is an abuse of the process of court. Therefore, in exercise of the power vested in this court under section 482 of Cr. P.C and for achieving the ends of justice, I find and hold that the

complaint lodged by the opposite party giving rise to Case No. AC-968 of 2009 and the cognizance taken thereof by the Magistrate is bad in law. As such impugned proceeding and all orders passed in the case are quashed.

25. The revisional application is allowed on contest. Interim order if any stands vacated. All related applications in this case are disposed of. Let a copy of the judgment be sent to learned Judicial Magistrate, 9th Court at Alipore, South 24 Parganas for information.

26. Urgent Photostat certified copy of this order may be supplied to the parties expeditiously, if applied for, maintaining all formalities.

(Ananda Kumar Mukherjee, J.)