

18.07.2022

Item No.26
Ct.No.34
dc.

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

C.R.R. 1433 of 2009

**Jahar Dey @ Johar Dey & Anr.
versus
State of West Bengal & Anr.**

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973 filed for quashing of proceedings in C.G.R. No. 771 of 2009 pending before learned Chief Judicial Magistrate, Alipore arising out of Gariahat Police Station Case No. 45 of 2009 dated 01.03.2009.

Mr. Somopriyo Chowdhury,
Mr. Dipayan Dan ... For the Petitioners.

Mr. Arijit Ganguly,
Mr. Arani Bhattacharyya ... For the State.

This revisional application was preferred challenging the continuation of the proceedings arising out of Gariahat Police Station Case No. 45 of 2009 dated 01.03.2009.

Today when the matter is called, Mr. Ganguly, learned advocate appearing for the State has produced the case diary as well as the Memo of Evidence prepared by an officer of Gariahat Police Station. Let the same be kept on record.

On conclusion of investigation, the investigating agency has submitted charge-sheet under Sections 498A/34 of the Indian Penal Code. The investigating authority in support of its case relied upon eight witnesses.

I find that the FIR was instituted by the father of one Soma Dey who was married to one Debasish Dey. The contents in the FIR was regarding the character of the petitioner no.1, the nature of the business carried out by the

petitioner no.1, his properties as also he being disliked by all his relations. There may be some allegations regarding the dispute in the family and the petitioner no.1, disliking the marriage which was solemnized between Debasish Dey and Soma Dey, mentally tortured the couple who happens to be his son and son's wife and tried to dispossess them from their place of business.

It has been informed by Mr. Chowdhury, learned advocate appearing for the petitioners that during the pendency of this revisional application, the petitioner no.1 viz., Jahar Dey @ Johar Dey, has expired and as such, he does not intend to proceed with the prayer as advanced by the petitioner no.1.

I have gone through the case diary, the statement recorded under Section 161 of the Code of Criminal Procedure particularly, the statement of Soma Dey who is alleged to be the victim of the circumstances. The only allegation against the petitioner no.2 is that she conspired with the petitioner no.1 for creating disturbances so that Debasish Dey husband of Soma Dey is unable to carry out his business at the schedule place.

Having regard to the peculiarity of the case where the case was instituted by the daughter-in-law's father and the witness happens to be the daughter-in-law and the son against the petitioners who are parents, I am of the opinion that the basic foundation of Section 498A of the Indian Penal Code is not made out in this case, particularly in respect of

the petitioner no.2. Having regard to the same, I am of the opinion that further continuation of proceedings arising out of Gariahat Police Station Case No. 45 of 2009 dated 01.03.2009 including the charge-sheet filed therein against the petitioner no.2 viz. Tulsi Dey would cause miscarriage of justice.

As such, all further proceedings arising out of Gariahat Police Station Case No. 45 of 2009 dated 01.03.2009 including the charge-sheet bearing No. 69 of 2009 dated 10.06.2009 under Sections 498A/34 of the Indian Penal Code filed before the learned Chief Judicial Magistrate, Alipore in respect of the petitioner no.2 viz. Tulsi Dey is concerned, are hereby quashed.

Accordingly, the revisional application being CRR 1433 of 2009 is allowed so far as the petitioner no.2 is concerned.

The police authorities of Gariahat Police Station would enquire so far as the submission of Mr. Chowdhury is concerned in respect of the petitioner no.1 having expired during the pendency of this revisional application and submit a report before the learned Chief Judicial Magistrate, Alipore.

For the present, the application/prayer of the petitioner no.1 is dismissed as not pressed.

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

Department is directed to send back the lower court records to the learned Chief Judicial Magistrate, Alipore within a week from date.

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.)