

12.8.2022
Court No.33
Sl. No.56
SD

CRR 1294 of 2019

In the matter of: Bidyasagar Mahato @ Vidyasagar Mahato & Ors.
....Petitioners.

Sk. Md. Bilwal Hossain

... for the Petitioners.

Mr. Saswata Gopal Mukherjee

Mr. Aniket Mitra

... for the State.

Mr. Moloy Roy

Mr. A.M. Sabir

... for the Opposite Party No.2.

The present revisional application under Section 482 of the Code of Criminal Procedure has been preferred against the impugned proceeding being Mogra Police Station Case No.102 of 2019 dated 11.5.2019 under Section 498A/406 of the Indian Penal Code pending in the court of learned Chief Judicial Magistrate, Chinsurah being G.R. Case No.596 of 2019.

It is contended by the petitioners that the opposite party no.2 lodged a complaint on 17.7.2016 before the Mogra Police Station against the petitioners herein praying for taking action against the petitioners herein to the effect that she was married with the petitioner no.1 herein on 02.5.2014 and after marriage she was subjected to torture both physically and mentally by the petitioner no.1 and his family members.

It was further alleged that at the time of marriage the father of the opposite party no.2 paid Rs.60,000/- cash to the petitioner herein along with gold and silver ornaments and other articles. The petitioner no.1 demanded money for purchasing motor cycle which the father of the opposite party no.2 could not provide and for which she was driven out from her matrimonial home and on the

basis of said allegation, Mogra Police Station Case No.232 of 2016 dated 17.7.2016 corresponding to G.R. No.1463 of 2016 under Sections 498A/406 was started. Thereafter, police after completion of investigation submitted charge-sheet under Section 498A/406 and the said case is at present pending for trial.

It is alleged, in spite of pendency of the aforesaid Mogra Police Station Case No.232 of 2016, the opposite party no.2 again lodged a second complaint on 11.5.2019 before Mogra Police Station against the petitioner herein alleging same facts and circumstances what she has stated in the aforesaid proceeding. However, on receipt of the said complaint, police started Mogra Police Station Case No.102 of 2019 dated 11.5.2019 under Sections 498A/406 of the Indian Penal Code and it appears that after completion of investigation, police submitted charge-sheet on November 30, 2019 and the said case is pending before the learned Chief Judicial Magistrate, Hooghly at Chinsurah.

Mr. Sk. Md. Bilwal Hossain, learned counsel for the petitioners, submits that on the selfsame allegation the G.R. No.1463 of 2016 is pending at present before the learned Judicial Magistrate, 5th Court, Hooghly at Chinsurah and the trial has already been started and in view of the same, the second case that is the present one being Mogra Police Station Case No.102 of 2019 cannot be proceeded with, on the ground that instant case has been started on the basis of the same complaint filed by the opposite party upon selfsame facts and circumstances. Since both the proceedings are similar and identical and as such, the impugned proceeding which is initiated later on, on the basis of selfsame facts and circumstances is not maintainable on the ground that two

parallel proceedings cannot be maintained on the same facts and circumstances against the petitioners and accordingly, he prayed for quashing the second proceeding pending before the learned Chief Judicial Magistrate, Hooghly at Chinsurah.

Mr. A.M. Sabir, learned counsel for the opposite party no.2, submits that facts and cause of action of both the cases are different and the offence under Section 498A committed by accused /petitioner is continuing one and as such, the second complaint under Section 498A/406 is also maintainable and allowed to be proceeded. However, he submits let a direction may be made that both the proceedings under Section 498A/406 being Mogra Police Station Case No.232 of 2016 dated 17.7.2016 and the present Mogra Police Station Case No.102 of 2019 dated 11.5.2019 are to be heard analogously.

Mr. Aniket Mitra, learned counsel for the State, submits that the materials appearing in the case diary suggest that the second proceeding has been initiated on a different cause of action and as such, it cannot be said that both the proceedings comprised of similar facts and circumstances.

Having considered the submissions made by both the parties and also on perusal of the materials in the case diary of both the cases, it appears that the accused persons will have no cause to prejudice, if both the aforesaid proceedings are heard analogously by the same Magistrate.

In view of the above, let Mogra Police Station Case No.102 of 2019 dated 11.5.2019 being G.R. No.596 of 2019 be withdrawn from the file of the learned Chief Judicial Magistrate, Hooghly at Chinsurah and transferred it to the Court of the learned Judicial

Magistrate, 5th Court, Hooghly at Chinsurah where the Mogra Police Station Case No.232 of 2016 dated 17.7.2016 being GR No.1463 of 2016 is pending.

Learned Judicial Magistrate, 5th Court, Hooghly at Chinsurah is hereby directed to hear analogously both the aforesaid G.R. No.1463 of 2016 along with G.R. No.596 of 2019.

However, the question for agitation before the trial court that the issues involved in both the proceedings are same, be kept open for decision at the time of framing of charges as well as at the time of trial.

Accordingly, CRR 1294 of 2019 is disposed of.

However, there will be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Ajoy Kumar Mukherjee, J.)