

15.12.2022

Court No.35
Item No. 14

D.Hira

CRR 1501 of 2016

**Rajarshe Mistry @ Rajarshi Mistri & Ors.
Vs.
The State of West Bengal & Anr.**

Mr. Suman Chakraborty.

... for the petitioners

Mr. Ranadeb Sengupta.

... for the State

Petitioners are the husband and other members of the matrimonial family of opposite party no. 2/ wife. They have prayed for quashing of the proceedings started against them pursuant to the Tarakeswar Police Station Case No. 178 of 2014 dated 7th August, 2014 under Sections 498A/494 of the Indian Penal Code pending in the Court of Additional Chief Judicial Magistrate, Chandannagar, Hooghly.

Learned Advocate appearing on behalf of the petitioners has submitted in Court, the affidavit-of-service which may be kept with record.

It is submitted that the opposite party no. 2/ wife has previously instituted a criminal case by dint of the complaint lodged in the Court of Additional Chief Judicial Magistrate at Arambagh on 10th February, 2014 and the Court is in seisin of the case.

It is further submitted that the present case is on the self-same cause of action by and between the same parties and is a malicious proceedings initiated against the present petitioners which should not be allowed to proceed any further.

It is further pointed out that the marital tie between the parties has already been dissolved by dint of the judgment dated 9th June, 2015 of the Matrimonial Court at Mumbai.

It is submitted that on the grounds as above continuance of the

criminal proceedings pursuant to Tarakeswar Police Station Case No. 178 of 2014 dated 7th August, 2014 under Sections 498A/494 of the Indian Penal Code now pending in the Court of Additional Chief Judicial Magistrate, Chandannagar shall only be a gross abuse of the process of Court and that the said proceedings may be quashed by an order of this Court.

Perused the materials available in record.

A complaint dated 10th February, 2014 was lodged by the mother of the present opposite party no. 2 in the Court of Additional Chief Judicial Magistrate, Arambagh, against the present petitioner on the ground of infliction of torture during the matrimonial life by the petitioners upon the opposite party no. 2/ wife/ daughter of the complainant.

According to the directions of the Court, a police case was registered and investigation was started.

It reveals that on the self-same cause of action the opposite party no. 2/ wife has lodged a subsequent FIR as mentioned above against the present petitioners i.e., Tarakeswar Police Station Case No. 178 of 2014 dated 7th August, 2014 under Sections 498A/494 of the Indian Penal Code. Events took a different shape when the parties are disassociated by dint of a decree of divorce dated 9th June, 2015.

Be that as it may, the petitioners have moved this revision praying for exercise of jurisdiction by this Court under Section 482 of the Code of Criminal Procedure on the ground of the proceedings pursuant to Tarakeswar Police Station Case No. 178 of 2014 dated 7th August, 2014 under Sections 498A/494 of the Indian Penal Code being a malicious one and inherently bad in law.

It is a trait law that in a case found to have been lodged with malice and inherent lack of *bona fide*, the proceedings consequent to the same should not be allowed to continue against the accused

persons.

On perusal of the contentions of the complaint dated 10th February, 2014 as well as that of the FIR in Tarakeswar Police Station Case No. 178 of 2014 dated 7th August, 2014 under Sections 498A/494 of the Indian Penal Code, it appears that allegations against the present petitioners are of self-same nature.

Therefore, there is no reason or justification to proceed of the present case against the petitioners which shall subject them only to double jeopardy.

A recent 3 Judges Bench decision of the Hon'ble Apex Court may be referred to, i.e., ***M/S Gimpex Private Limited vs. Manoj Goel***, reported in **2021 SCC Online SC 925**, where the Court though has dealt with the issues under the Negotiable Instruments Act, 1881, but on the point of 'two complaints' being made for the self-same cause of action, has been pleased to hold that allowing prosecution under both sets of complaint would be contrary to the purpose of the statute, that to allow the accused to be prosecuted and undergo trial for two different complaints, which in its essence arise out of one underlying offence, would be an abuse of the process of the Court.

It is worth mentioning that the complaint case is now pending in the Court of Additional Chief Judicial Magistrate, Arambagh.

Under such circumstances, considering the settled law on the point, this Court finds it proper to direct that the proceedings pursuant to Tarakeswar Police Station Case No. 178 of 2014 dated 7th August, 2014 under Sections 498A/494 of the Indian Penal Code be quashed and set aside.

It is already been brought on record that the petitioner no. 2 has died during pendency of the present revision case.

On the discussion as above, CRR no. 1501 of 2016 is allowed.

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

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

(Rai Chattopadhyay, J.)