

06-07-2022  
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Item no.73

**C.R.R. No. 1393 of 2019**

**Sri Bivas Rana & Another**  
**-vs-**  
**The State of West Bengal & Another**

Mr. Prasenjit Debnath

... For the petitioners.

Mr. Saryati Datta

... For the State.

In spite of service none appeared on behalf of the opposite party no.2.

The State is being represented by Mr. Saryati Datta, Learned Advocate.

This revisional application has been directed to quash the proceeding being G.R. No.846 of 2018 arising out of Daspur Police Station Case No.338 of 2018 dated 29.10.2018 under Sections 498A/323/325/406/506/354/34 of the Indian Penal Code along with Sections 3 and 4 of the Dowry Prohibition Act, 1961 pending before the Learned Additional Chief Judicial Magistrate, Ghatal, Medinipur (W).

The gist of complaint is that marriage took place between the brother of the petitioner no.1 and the opposite party no.2 (hereinafter called as opposite party No.2) herein on 24.01.2017 according to Hindu rites and customs and cash amount of Rs.1,50,000/- (One Lakh Fifty Thousand), 5 (five) vori gold ornaments and other articles were given by the father of the O.P. No.2 herein.

Further allegation is that after few days of marriage the O.P. No.2 was subjected to physical and mental torture by her husband and

parents-in-law to bring more dowry. She was not given proper food to survive and she was forced to do all household works from morning to night.

On 27.05.2018, the husband of the O.P. No.2, upon instruction of her mother-in-law pressed a hot iron at her right hand and the neighbours rescued her and thereafter O.P. No.2 went to her father's house. Subsequently she returned to her matrimonial home only after she was given an assurance by her husband and parents-in-law not to torture her any further. But thereafter again her husband assaulted her to bring Rs.1,20,000/- from her father and lastly on 26.10.2018 at about 9 P.M. her husband assaulted her and also tried to strangle her and the other accused persons outraged her modesty. Thereafter, she went to hospital for treatment on 27.10.2019 and since then she is residing at her father's house.

It is submitted on behalf of the petitioner that there are total nine accused persons in this case including the petitioners. The petitioners are brother-in-law and wife of brother-in-law of the opposite party No. 2. After investigation police has submitted charge sheet and upon submission of charge sheet, learned Magistrate had taken cognizance of the offence on 18.02.2019.

Mr. Prasenjit Debnath, learned advocate appearing on behalf of the petitioner submits that the petitioner no. 1 completed Master Degree in Physics from the Indian Institute of Technology, Delhi in May, 2009 and thereafter he joined at Satyendranath Bose National Center for Basic Sciences, Salt Lake in July 2009 for pursuing PhD degree. Before receiving his PhD Degree, petitioner no.1 left India on

February 28, 2014 and went to Japan to work as research associate.

It is also to be mentioned that the petitioner no.2 being the wife of petitioner no.1 also went along with the petitioner no.1 in Japan. Since March, 2015, both the petitioners had been residing in Japan and time to time the employment agreement was extended and the petitioners obtained residence card of Japan issued by the competent authority. Though the petitioners were residing in Japan since 2014/2015 but sometime they came to India for short duration to spend holidays with their family members at subsequent different stages.

Mr. Debnath further submitted that no specific allegation against the petitioner no.1 and his wife i.e. petitioner No.2 has been attributed in the First Information Report. The materials available in the Case Diary does not at all disclose any offence against the petitioners. The name of the petitioner merely given as list of accused person in F.I.R. and the allegation is omnibus in nature.

Mr. Debnath strenuously argued that there is no denial of the fact that on the date of alleged incident i.e. on 27.05.2018, 20.06.2018 and 27.10.2018, petitioners were not present at the place of occurrence and as such present proceeding has been instituted by the O.P.No.2 against the present petitioners with mala fide intention and ulterior motive.

Allegation against the present petitioners are absurd and inherently improbable and there is no sufficient ground for proceeding against the petitioners. Allegation made in the F.I.R. even if they are taken at their face value and accepted in entirety it does not constitute

any offence as alleged against the present petitioners and if the proceeding is allowed to be continued then it will be an abuse of the process of the Court and as such the petitioners have prayed for quashing the said proceeding, to obviate the harassment of the petitioners.

Learned advocate appearing on behalf of the State submits that in the complaint no specific allegation has been attributed against the present petitioners and the O.P. No.2 in her statement recorded under Section 164 Cr.P.C. has also not made any allegation against the present petitioners. Only in the statement recorded by police under Section 161 Cr.P.C. their names transpires with omnibus allegation of abusing her with filthy languages and inflicting torture upon her. Mr. Datta, on behalf of the state further appraised the court that martial tie of opposite party no.2 with the brother of petitioner No.1 has already been dissolved by way of decree of mutual divorce on 21.04.2022.

I have gone through the materials in the Case Diary including the complaint and the statement recorded under Section 161, seizure list as well as the injury report. No specific allegation has been attributed against the present petitioners and except said isolated statement before police that her brother-in-law and wife of brother-in-law along with other accused persons have abused her with filthy languages and inflicted torture upon her. I find no other incriminating material against the petitioners. Moreover when she made statement before the Magistrate on oath under Section 164 she has not corroborated the allegation against present petitioners which she

allegedly made before police while examined u/s 161 of the code.

The name of the present petitioners has been only listed in the bottom of the written complaint under the heading “Name of the accused persons” and in view of the materials available in the case diary, it can be logically concluded that there is not even remote chance of their conviction, even if the proceeding allowed to be continued. There is no denial that petitioners are residents of Japan since 2014/2015 and occasionally they used to come India and as such omnibus allegation of inflicting torture, without attributing any specific role in furtherance of the general allegations made against them, leads to the conclusion that the allegation in the complain is inherently improbable and absurd.

In this context reliance can be placed upon Apex Court Judgment in ***Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others*** reported in, **2022 SCC online SC 162**.

*“18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.”*

*“19. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that ‘all accused harassed her mentally and threatened her of terminating her pregnancy’. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are therefore general*

*and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.”*

**“22.** *Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the accused appellants, it would be unjust if the Appellants are forced to go through the tribulations of a trial, i.e., general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must therefore be discouraged.”*

In view of the aforesaid facts and circumstances of the case and in view of the materials collected during investigation, I find that the present proceeding if allowed to be continued against present petitioners that will be an abuse of the process of the Court.

In view of the above, let further proceeding being G.R. No. 846 of 2018 arising out of Daspur Police Station Case No.338 of 2018 dated 29.10.2018 under Sections 498A/ 323/ 325/ 406/ 506/ 354/34 of the Indian Penal Code, in respect of present petitioners hereby quashed.

CRR 1393 of 2019 is accordingly allowed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Ajoy Kumar Mukherjee, J)

