

CRR 1929 of 2019

In the matter of : Aditya Mohta

.....Petitioner

Mr. Ayan Bhattacharjee
Mr. Sharequl Haque

...for the petitioner

Ms. Anasuya Sinha
Mr. Pinak Kumar Mitra

...for the State

The present revisional application has been preferred under the Section 482 of the Code of Criminal Procedure for quashing of the proceedings being G.R. case no. 1257 of 2017 arising out of Posta Police Station Case no. 170 of 2016 dated July 14, 2017 under Sections 498A/34 of the Indian Penal Code, 1860 and under Section 3/4 of the Dowry Prohibition Act, 1961 pending before the court of learned Additional Chief Metropolitan Magistrate-I at Calcutta.

The petitioner contended that the opposite party no. 2 lodged a First Information Report on the allegation that after the marriage of the opposite party no. 2, it came to her knowledge that her husband was a divorcee and it was further alleged that the petitioner being the brother-in-law along with his wife and husband of the opposite party no. 2 started physical and mental torture upon opposite party no. 2 which ultimately had driven her away from her matrimonial house. It was further alleged that the petitioner along with his wife wanted to grab the entire property given to the opposite party no. 2 at the time of marriage and the petitioner along with his wife abused the opposite party no. 2

with filthy and abusive language without any reason. Subsequently the opposite party no. 2 gave birth of a child and the opposite party no. 2 was compelled to return to her matrimonial house, when she was forced to stay in a old dilapidated room on the 5th Floor at 23, Kali Krishna Tagore Street, Kolkata-700007 without proper food and medical facilities, whereas the husband stayed at 4th floor of the same building at luxurious life and style with all amenities. It is further alleged that the husband along with the petitioner and his wife always condemned the opposite party no. 2 for giving birth to a female child.

After making purported investigation, the investigating agency filed charge-sheet before the learned additional Chief Judicial Magistrate on 31st July, 2018 under Section 498A/34 of the Indian Penal Code read with Section 3 /4 of the Dowry Prohibition Act against two accused persons including the petitioner and was pleased to discharge one of the accused persons in the First information report namely, Aruradha Mohta and the learned additional Chief Metropolitan Magistrate was pleased to take cognizance vide order dated 12th June, 2018. and thereafter, transferred the case to the court of learned Metropolitan Magistrate, 13th Court, Calcutta for trial and disposal.

Learned advocate for the petitioner submits that the petitioner is innocent and is no way connected with the alleged offence and the present proceeding has been initiated suppressing the material fact. Truth is that the marriage of opposite party no. 2 took place on 3rd June, 2015 and that there was no exchange of

gifts by and between the parties during her marriage and social marriage was arranged on mutual decision of both the parties. The marriage was duly consummated and opposite party no. 2 started living with her husband but she started keeping herself away from loyal duties to the family members of the petitioner. The opposite party no. 2 was disrespectful towards the petitioner and his family members. Allegations against the petitioner herein based on ill framed set of facts, only to expose the petitioner to unnecessary harassment and threat of being put behind the bar. The petitioner has nothing to do with the grievance of the Indra Mohta/complainant. Therefore, continuance of the impugned proceedings so far as the petitioner is concerned, is an abuse of process of law.

He further submits that even if the prosecution story accepted to be gospel truth then also the ingredients of offence punishable under Section 498A/34 of the Indian Penal Code and under Sections 3 /4 of the Dowry Prohibition Act does not disclose. The story loomed large by the first information report against the present petitioner suffers from intrinsic hollowness and antagonistic contradictions. The first information report and the charge sheet does not incorporate any specific allegation qua the present petitioner. Even bald allegations as made in the first information report and charge sheet were not directed whatsoever against the petitioner herein.

He further submits that mere mentioning of relevant sections and language of those sections is not sufficient. Particulars of offence committed by each accused persons and role played by them in committing offence needs to be stated. In the instant

case, allegation in the first information report under charge sheet are vague inasmuch as the allegation do not reflect any ingredient of the offence punishable under Section 498A/34 of the Indian Penal Code or under Sections 3 /4 of the Dowry Prohibition Act, against the present petitioner.

He further submits that present proceeding is also barred since it has been initiated at a belated stage and the opposite party no. 2 has not explained the delay in initiation of the proceeding and it has been filed only to harass the other side. He also submits that the court proceeding ought not to be permitted to degenerate into the weapon of harassment and prosecution and the first information report was lodged clearly with a view to spite the parties because of a private and personal grudge. Accordingly, if the present proceeding is allowed to be continued that would be mere abuse of the process of the court and as such he prayed for quashing the proceeding in respect of the present petitioner.

It appears that in spite of service of notice, the opposite party no. 2 remain unrepresented.

Learned advocate for the State placed the case diary and contended that no specific overt act has been attributed against petitioner herein in the statements recorded under Section 161 of the Code of Criminal Procedure. It is not clear from their statements as to what specific role has been attributed in respect of the present petitioner in the alleged offence.

I have careful perused the case diary, it appears that the present petitioner has been implicated without any basis, when no *prima facie* case is made out. The veiled object behind the prosecution is apparently to harass the petitioner herein, the

impugned prosecution is wholly unfounded in respect of present petitioner. FIR is also vague as to what exact role played by present petitioner in committing the offence.

In ***Kahkashan Kausar @ Sonam and others Vs. State of Bihar & others*** reported in **2022 SCC OnLine SC 162** Apex Court was pleased to observe as follows:-

“18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, 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.”

In ***Preeti Gupta & another Vs. State of Jharkhand & another*** reported in **(2010) 7 SCC 667**, Supreme Court observed:-

“32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.”

“33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.”

In ***Neelu Chopra & another Vs. Bharti*** reported in **2009**

(10) SCC 184, it was specifically observed:-

“5. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not be all and end of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence. When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein on the basis of vague and general complaint which is silent about the precise acts of the appellants.”

Having considered the facts and circumstances of the case and that the allegation against the present petitioner is evasive and that the materials in the case diary including statement shows no specific role has been attributed against the present petitioner in committing the alleged offence and that in view of the materials available in the case diary, the chance of conviction of the present petitioner is bleak, I find that this is a fit case where invoking power under Section 482 of the Code of Criminal Procedure, the petitioner is liable to be quashed.

In view of the above, CRR 1929 of 2019 is allowed.

Let all further proceedings being G.R. case no. 1257 of 2017 arising out of Posta Police Station Case no. 170 of 2016 dated July 14, 2017 under Sections 498A/34 of the Indian Penal Code, 1860 and under Section 3/4 of the Dowry Prohibition Act, 1961 pending before the court of learned Additional Chief Metropolitan Magistrate-I at Calcutta be quashed against the present petitioner, Aditya Mohta.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)