

13.12.2022

Item No.37
Ct.No.34
dc.

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

C.R.R. 2087 of 2021

**Niranjana Karmakar
versus
The State of West Bengal & Ors.**

In Re: An Application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973.

Mr. Kallol Basu,
Mr. Bratin Kumar Dey,
Mr. Pradeep Pandey,
Mr. Apalak Basu ... For the Petitioner.

Ms. Sreeparna Das ... For the State.

Mr. Sabyasachi Banerjee,
Ms. Nahid Ahmed
... For the Opposite Party Nos. 2, 3 and 4.

Affidavit-in-opposition filed on behalf of the opposite party nos. 2, 3 and 4 and affidavit-in-reply filed on behalf of the petitioner be kept on record.

The subject-matter of challenge in this revisional application relates to an order dated 27.08.2021 passed by learned Additional Chief Judicial Magistrate, Serampore, Hooghly in connection with Uttarpara Police Station Case No. 963 of 2017 under Sections 420/406/34 of the Indian Penal Code. The order dated 27.08.2021 reflects that the learned Additional Chief Judicial Magistrate, Serampore was pleased to reject the petition filed by the *de facto* complainant and discharged the accused persons viz. Tanusree Dey, Jagabandhu Dey and Sima Dey. The learned Additional Chief Judicial Magistrate, Serampore was pleased to make the following observations :

“Now, let us assume that the allegation made by the defacto complainant regarding incapability of sexual intercourse by the accused No. 3 Tanusree Dey is absolutely true, then also such disability on the part of the accused Tanusree Dey only gives the defacto complainant a right to file appropriate matrimonial suit for annulment of marriage. Prior to marriage, it cannot be ascertained that the accused No. 3 was incapable of sexual intercourse. Therefore, there is no pre-determined effort on the part of the accused Tanusree Dey to discover her deficiency and hence, her conduct cannot be construed as a fraudulent act or that she had acted dishonestly to deceive the defacto complainant. A mere civil right cannot be clothed as criminal case as desired by the defacto complainant.”

It was further observed by the learned Additional Chief Judicial Magistrate, Serampore that during investigation, the Investigating Officer examined three witnesses i.e. the *de facto* complainant, his father Nirmal Kr. Karmakar and his mother Sukhla Karmakar. Nothing was seized in course of investigation of the case. So far as the statement of the witnesses under Section 161 of the Code of Criminal Procedure is concerned, according to the learned Magistrate, those are repetition of the allegations made in the petition under Section 156(3) of the Code of Criminal Procedure filed by the *de facto* complainant and even if all the allegations are accepted to be correct, no materials for commission of offence under Section 406 of the Indian Penal Code is made out after completion of investigation of the case.

Mr. Kallol Basu, learned advocate appearing for the petitioner submits that the learned Magistrate exceeded his authority while passing the impugned order as the limited scope in an application under Section 167(5) of the Code of Criminal Procedure was related to stoppage of investigation and discharging of the accused persons. It has been emphasised that there has been concealment of facts and had the petitioner known the same, he would not have consented or for that purpose anyone would have consented for marriage. There is specific observation, according to the learned advocate, in the decree passed by the learned civil court where the marriage has been nullified. The suppression and concealment about the knowledge of such deformity, according to the petitioner, makes out a case of deception as the petitioner himself has suffered because of the injury inflicted upon him both in his body and mind. It has been emphasised that conduct of the accused Tanushree Dey (Karmakar) exposes her to a fraud committed and her fraudulent activities do reflect that an offence has been made out under Section 420 of the Indian Penal Code. It has also been submitted by the learned advocate that the conduct of the accused reflects complicity in the offence and the learned Magistrate illegally passed the impugned order without adhering to the relevant provisions of law.

Relying upon the order of Madurai Bench of Madras High Court dated 20.07.2022 in ***Irfana Nasreen Vs. The State*** (CrI.O.P(MD)No.11840 of 2022), learned advocate for the

petitioner emphasised that in similar circumstances, where a husband was found to be impotent, the Madurai Bench was pleased to hold that offences under Section 417 read with Section 420 of the Indian Penal Code was made out and directed the police to investigate the case.

Mr. Banerjee, learned advocate appearing for the opposite party nos. 2, 3 and 4, on the other hand, submits that no case has been made out by the petitioner for invoking the jurisdiction of the criminal court and after a thorough investigation, report was laid before the learned Magistrate and the learned Magistrate, after perusal of the materials collected by the investigating agency, gave his finding. According to the learned advocate, mere assertions cannot be a ground for culpability and the reasons which can give rise to proceeding for divorce or nullity of marriage cannot be a ground for initiation of criminal proceedings. To that effect, learned advocate for the opposite party nos. 2, 3 and 4, relies upon a decision of this Hon'ble Court in ***Shibnath Mukherjee & Ors. Vs. State of West Bengal & Anr.*** reported in **2005 SCC OnLine Cal 68**.

I have considered the materials appearing on record and also the order passed by the learned Additional Chief Judicial Magistrate, Serampore and the reasons assigned by the learned Magistrate. On an assessment of the same, I am of the opinion that the elements of not only cheating, but also the factum of culpability in the present case is completely missing to attract the provisions of the Indian Penal Code and

for compelling the lady and her parents to face charges under Sections 420/406 of the Indian Penal Code. The basics of the offences particularly, in the background of the purposes of criminal law that a guilty must be punished the present factual circumstances, according to me, do not give rise to any cause of action for initiation of proceedings under the criminal law.

There may be or there are disputes in the present case. However, the provisions of the civil law is absolute to take care of the allegations, to give such a dispute the cloak of a criminal proceeding is an abuse of the process of the court. As such, I do not find any reason to interfere with the order dated 27.08.2021 passed by the learned Additional Chief Judicial Magistrate, Serampore, Hooghly in connection with Uttarpara Police Station Case No. 963 of 2017.

The revisional application being CRR 2087 of 2021 is, thus, dismissed.

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

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.)