

12.12.2022
Item No. 08
BR

CRR 2413 of 2003

In the matter of : Haider Khan @ Kaider
Khan & Ors.

Mr. Tapas Kumar Ghosh,
Mr. Tanmoy Chowdhury
.... For the petitioners

This application under Section 482 of the criminal Procedure Code assails the proceeding pending before the learned Sub-Divisional Judicial Magistrate, Kandi (as then was) being CR No. 104 of 2003 under Section 342/498A /34 of the Indian Penal Code.

Briefly stated Nur Nehar Bewa filed petition of complaint under Section 97 of the Cr P C before the learned SDJM, Kandi , Murshidabad against her son- in-law , his first wife , and his cousin. It is alleged that accused no. 1 and 3 meaning thereby, her son-in-law and his cousin brother used to inflict torture upon his daughter, Chandni Bibi who happens to his wife. Chandni Bibi and her two children were even denied to food. The complainant came to know that the accused persons would kill her daughter and grand children went to the house of the accused person with sum of Rs. 10,000/- and found that her daughter and grand children were wrongly confined in the house. She was not allowed to contact and she was threatened by the accused persons. Learned SDJM examined the complainant under Section 200 Cr P C and was pleased to issue process under Section 498A

and 342 of the Indian Penal Code and also was pleased to direct the accused persons to show cause as to why the petition under Section 97 of the Cr P C should not be allowed. The accused persons surrendered to the jurisdiction of learned trial Court and thereafter this petition under consideration was filed.

In the petition of complaint I do not find any whisper even indicating commission of offence within the meaning of Section 498A of the Indian Penal Code. Admittedly Chandni Bibi and her two children were living in the house of accused no. 1 who happened to be her husband. This fact cannot be termed as wrongful confinement within the meaning of Section 341 of IPC wife is supposed to live with her husband. Therefore, in my opinion ingredient of offence within the meaning of Section 342 of the IPC is also glaringly missing.

Under such circumstances, I do not find any reason to keep the proceeding alive for accused persons to come up before the learned trial Court with an explanation when the ingredient of offence within the meaning of Section 342 of the IPC has not been made out. It will be sheer abuse of process of law if the proceeding is allowed to remain in force. Accordingly, I am inclined to invoke the provisions of Section 482 of the CR P C to quash the proceeding.

Mr. Ghosh, learned counsel also submits that the matter was dropped before the learned trial Court. He has been instructed to submit.

Let a copy of the order be sent to the learned trial Court for information and necessary action.

All parties are to act on the server copy of this order duly downloaded.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Siddhartha Roy Chowdhury, J.)