

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 2918 of 2022

Amit Bajoria

-Vs-

The State of West Bengal & Anr.

For the Petitioner: Mr. Kallol Mondal, Adv.,
 Mr. Krishan Ray, Adv.,
 Mr. Souvik Das, Adv.,
 Mr. Anamitra Banerjee, Adv.,
 Mr. Samsheer Ansari

For the Opposite party No.2:-
 Mr. Sandipan Ganguly, Sr. Adv.,
 Mr. Debasish Ray, Adv.,
 Mr. L. Vishal Kumar, Adv.,
 Mrs. Manaswita Mukherjee, Adv.

Heard on: 14 September, 2022.

Judgment on: 14 September, 2022.

BIBEK CHAUDHURI, J. : –

1. The petitioner has approached this Court under Section 482 of the Code of Criminal Procedure praying for quashing of the proceeding pertaining to C.G.R Case No.1495 of 2022 corresponding to Ballygunge Police Station Case No.43 dated 25th May, 2022 under Sections 498A/406/34 of the IPC read with Section 3/4 of the Dowry Prohibition Act presently pending before the learned Chief Judicial Magistrate, South 24 Parganas at Alipore.

2. The petitioner is the husband of opposite party No.2. Their marriage was solemnized according to Hindu Rites and Customs on 3rd February, 2006. In the wedlock between the petitioner and the opposite party No.2, she gave birth to two female children in the year 2007 and 2014. It is pertinent to mention at this stage that the opposite party No.2 made detailed allegation against her husband, petitioner herein and other matrimonial relations delineating the manner how she was treated with cruelty in her matrimonial home. It is also alleged that the accused persons misappropriated stridhan properties of the opposite party No.2/defacto complainant.

3. On the basis of the said complaint, police registered Ballygunge P.S Case No.43 dated 25th May, 2022 against the petitioner and other matrimonial relations of the opposite party No.2 under the above stated offences.

4. The petitioner being the husband of opposite party No.2 has prayed for quashing of the criminal proceeding instituted against him and other matrimonial relations of the opposite party No.2 on the basis of the FIR drawn on the written complaint made by the opposite party No.2 on the ground that before registering the case the Officer-in-Charge attached to Ballygunge Police Station failed to conduct preliminary inquiry in terms of the guidelines made by the Hon'ble Supreme Court in **Lalita Kumari vs. State of U.P & Ors** reported in **(2014) 2 SCC 1**.

5. It is submitted by Mr. Kallol Mondal, learned Counsel on behalf of the petitioner that prior to registering a FIR case, it is the bounden duty of

the Police Authority, in the view of the guidelines laid down in Lalita Kumari, to verify the veracity or otherwise all the information received to ascertain as to whether the information reveals any cognizable offence or not. In paragraph 120.6 of the said report, the Hon'ble Supreme Court held as hereunder:-

“120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases
- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.”

6. Mr. Mondal further draws my attention to Memo No.378/Law Cell dated 10th September, 2021 issued by the Government of West Bengal Police Directorate, Bhabani Bhawan, Alipore under the signature the Additional Director General of Police (Administration-II) West Bengal directing the Police Officer to scrupulously follow the guidelines issued by the Hon'ble Supreme Court of India relating to conducting preliminary inquiry to ascertain whether the information reveals any cognizable offences in certain cases.

7. Thus, it is submitted by the Advocate for the petitioner that before registration of Ballygunge FIR Police Station Case No.43 of 2022, the

Officer-in-Charge of the Police Station had the mandatory duty to inquire as to whether the complaint filed by the opposite party No.2 discloses a cognizable offence or not. In support of his contention Mr. Mondal refers to an unreported decision of a Coordinate Bench of this Court in the case of **Rahul Kr. Shaw & Ors vs. State of West Bengal & Anr : CRR No.1534 of 2021, decided on 2nd December, 2021**. Factual background of the aforesaid case is almost similar to the case in hand.

8. A Coordinate Bench on due consideration of Lalita Kumari held that the Investigating Agency in such cases ordinarily should conduct a preliminary inquiry unless it is not shown that immediate registration of FIR would defeat the very purpose of investigation or conducting a preliminary inquiry will be an empty formality.

9. Mr. Debasish Ray, learned Advocate represents the opposite party No.2. While referring his submission on merit of the case, it is pointed out by Mr. Ray that Lalita Kumari never stipulated a hard and fast rule that in all cases under Section 498A and other cognate penal provisions, preliminary inquiry before registration of a police case is obligatory. To substantiate his contention he refers to paragraph No.120.1, 120.2, 120.4 of Lalita Kumari.

10. For proper appraisal the ratio laid down in Lalita Kumari, I think it is absolutely necessary to reproduce the above mentioned paragraphs herein below:-

“120.1. Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a

cognizable offence and no preliminary inquiry is permissible in such a situation.”

“120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.”

“120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.”

11. Thus it is submitted by Mr. Ray that jurisdiction of FIR is mandatory if the information discloses commission of cognizable offence. Only where the information does not disclose a cognizable offence, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. The Police Officer cannot avoid his duty of registering offence if cognizable offence is disclosed.

12. Careful perusal of the directions/guidelines made by the Hon’ble Supreme Court in Lalita Kumari suggests that preliminary inquiry is necessary only when it is doubtful to hold that the information received by the Police Officer has disclosed a cognizable offence or not.

13. In the instant case, I have carefully perused the FIR. The FIR discloses specific acts of willful conduct, cruelty and harassment, both physical and mental alleged by the opposite party No.2 against her husband and other matrimonial relations. Therefore, the Police Authority did not commit any error in registering criminal case against the petitioner and other matrimonial relations under various penal provisions.

The nature of allegation made by the opposite party No.2 suggests that the police authority acted within the guidelines made by the Hon'ble Supreme Court in Lalita Kumari.

14. Therefore, I do not find any reason to interfere and admit the instant revision and the same is summarily dismissed.

(Bibek Chaudhuri, J.)