

30.03.2022

Item No.61
Ct.No.34
dc.

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

C.R.R. 2429 of 2019

**Udit Prakash @ Bikash
versus
The State of West Bengal & Anr.**

In Re: An Application under Sections 401/397 read with Section 482 of the Code of Criminal Procedure, 1973 filed in connection with G.R. Case No. 1330 of 2016 arising out of Asansol GRPS Case No. 35 of 2016 dated 25.05.2016.

Ms. Afreen Begum,
Mr. Fahad Imam,
Mr. Debanjan Mukherjee ... For the Petitioner.

Mr. Imran Ali,
Ms. Manisha Sharma ... For the State.

Mr. Satadru Lahiri,
Mr. Sourav Paul,
Mr. Safdar Azam,
Mr. Sirsho Dasgupta ... For the Opposite Party No.2.

The present revisional application has been preferred challenging the continuance of the proceedings relating to Sessions Case No. 120 of 2018 arising out of Asansol GRPS Case No. 35 of 2016 dated 25.05.2016 including the order dated 05.08.2019 passed by learned Additional Sessions Judge, 2nd Court, Asansol wherein the learned trial court was pleased to reject the prayer for discharge of the petitioner from the instant case.

Learned advocate appearing for the petitioner submits that the petitioner viz. Udit Prakash @ Bikash happens to be the brother-in-law of the deceased and in the materials collected by the investigating agency substantial allegations are lacking so far as the petitioner is concerned. Accordingly, the petitioner preferred an application for discharge after

submission of charge-sheet and receipt of documents and papers under Section 207 of the Code of Criminal Procedure.

Learned trial court considered the said application for discharge under Section 227 of the Code of Criminal Procedure and rejected the contentions so advanced on behalf of the petitioner. Reason assigned by the learned trial court for rejecting the said application, firstly, was regarding the issue of the deceased being a psychiatric patient and she was being taken for treatment which, according to the learned court, was not acceptable to be tested at the stage of consideration of discharge. Secondly, the learned trial court considered the statements recorded under Section 161 of the Code of Criminal Procedure and was of the opinion that incriminating materials appeared against the accused persons and there is no scope for prejudging the issue.

The learned advocate appearing for the petitioner has relied upon a judgement of the Hon'ble Supreme Court in ***Geeta Mehrotra and Another Vs. State of Uttar Pradesh and Another*** reported in ***(2012) 10 Supreme Court Cases 741***. Learned advocate draws the attention of this Court to paragraph 25 of the said judgement which is set out as follows :

“25. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegations of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasise by highlighting is that, if the FIR as it

stands does not disclose specific allegation against the accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant wife. It is the well-settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing, especially in cases of matrimonial disputes whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of overimplication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

The learned advocate for the petitioner has also relied upon a judgement of the Hon’ble Supreme Court in ***Mirza Iqbal alias Golu and Another Vs. State of Uttar Pradesh and Another*** reported in **2021 SCC OnLine SC 1251**. Learned advocate draws the attention of this Court to paragraph 12 of the said judgement which is set out as follows :

“12. From a perusal of the complaint filed by the 2nd respondent and the final report filed by the police under Section 173(2) of Cr.P.C., We are of the view that the aforesaid judgment fully supports the case of the appellants. Even in the counter affidavits filed on behalf of respondent nos. 1 and 2, it is not disputed that the 1st appellant was working in ICICI Bank at Khalilabad branch, but merely stated that there was a possibility to reach Gorakhpur by 8 p.m. Though there is an allegation of causing injuries, there are no other external injuries noticed in the postmortem certificate, except the single ante-mortem injury i.e. ligature mark around the neck, and the cause of death is shown as asphyxia. Having regard to the case of the appellants and the material placed on record, we are of the considered view that except vague and bald allegations against the appellants, there are no specific allegations disclosing the involvement of the appellants to prosecute them for the offences alleged. In view of the judgment of this Court in the case of Geeta Mehrotra¹, which squarely applies to the case of the appellants, we are of the view that it is a fit case to quash the proceedings.”

Ms. Manisha Sharma, learned advocate appearing for the State has produced the case diary as also report submitted regarding the progress of the case. Let the said report dated 21.02.2022 be kept on record.

The report reflects that the next date has been fixed for evidence on 07.04.2022.

Mr. Lahiri, learned advocate appearing for the opposite party no.2 resists the contentions advanced on behalf of the petitioner.

I have considered the materials appearing in the case diary particularly, the statements recorded under Section 161 of the Code of Criminal Procedure of Anil Kumar, Sunita Burnwal, Sanjit Burnwal and Swami Dayal including the statement recorded under Section 164 of the Code of Criminal Procedure. Presently, the charge-sheet reflects that there are allegation of mental and physical torture along with offences under Section 306 of the Indian Penal Code. The witnesses, which have been relied upon by the prosecution, have consistently in their statements under Section 161 of the Code of Criminal Procedure before the investigating officer stated regarding the participation of the present accused firstly for demand of further dowry and secondly, there is allegation of involvement at the time of incident taking place. At the stage of considering discharge application, the learned court is to conjointly consider Section 227 of the Code of Criminal Procedure as well as Section 228 of the Code of Criminal Procedure. The provision of Section 228 of the Code of Criminal Procedure incorporates that “the judge is of opinion that there is ground for presuming that the accused has committed an offence”. At this stage, the primary consideration of the court is not that whether an accused would be convicted and the basic issue which would weigh with the court is whether there is ‘some suspicion’ or ‘grave suspicion’.

The aforesaid view is also settled by the Hon'ble Supreme Court in ***Chitresh Kumar Chopra Vs. State (Government of NCT of Delhi)*** reported in ***(2009) 16 Supreme Court Cases 605***. The truth or falsity of the allegation, at this stage, cannot be considered and the judgements of the Hon'ble Supreme Court referred to above by the learned advocate for the petitioner is restricted to the facts of the said case which have no manner of application so far as the facts/material appearing in the present case. As such, no interference is required at this stage.

Accordingly, the revisional application being CRR 2429 of 2019 is dismissed.

Interim order, if any, is hereby vacated.

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.

(Tirthankar Ghosh, J.)