

05.05.2022

Sl. No. 54

Srimanta

Ct.No. 42

CRR/2541/2012

In Re : An application under Section **482** of the Code of Criminal Procedure.

In the matter of : **Sri Chandra Nath Mondal.**

...petitioner.

Mr. Dipanjan Chatterjee, Adv.,
Mr. Atanu Ghosh, Adv.

...for the petitioner.

Mr. Bidyut Kumar Ray, Adv.,
Ms. Manisha Sharma, Adv.

...for the State.

The instant criminal revision reveals an unfortunate situation where ignorance of law vitiated the entire proceeding, which may otherwise be a fit case for trial.

One Smt. Tanima Mondal, wife of the present petitioner filed an application alleging offence under Sections 494/495 read with Section 120B of the Indian Penal Code stating, *inter alia*, that the complainant is the legally married wife of the present petitioner. Their marriage was solemnized on 2nd June, 1985 and in their wedlock she gave birth to a daughter who is now major. The petitioner during subsistence of marriage, married to one Anju Das for the second time on 11th May, 1995 and in the said wedlock his second wife gave birth to two daughters. On such allegation the complainant prayed before the Learned Chief Judicial Magistrate, Howrah to send the petition to the Officer-in-Charge, Sankrail Police Station directing him to treat the same as FIR under Section 156(3) of the Code of Criminal Procedure and to proceed with the investigation of the case.

The Learned Chief Judicial Magistrate, Howrah passed an order under Section 156(3) of the Code of Criminal Procedure directing the Officer-in-Charge, Sankrail Police Station to treat the petition as a written complaint and to start a specific case treating the same as FIR. The Police also complied with the order of the Learned Chief Judicial Magistrate, Howrah registered a specific Police case, investigated into the said case and on culmination of investigation submitted charge-sheet.

The entire procedure recorded above was carried out in violation of Section 198 of the Code of Criminal Procedure. Section 198 deals with the prosecution for offences against marriage. Section 198(1) of the Code of Criminal Procedure states :-

"No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45/1860) except upon a complaint made by some person aggrieved by the offence".

Thus, it is explicitly clear in Section 198 that the Court of the Learned Magistrate is empowered to take cognizance upon receiving a complaint made by some aggrieved person alleging commission of offence punishable under Chapter XX of the Indian Penal Code.

Thus, a case for the offence under Chapter XX of the Indian Penal Code cannot be registered on the basis of a Police report. The Magistrate is empowered to take cognizance upon a complaint disclosing commission of offence under Chapter XX of the Indian Penal Code. The Learned Magistrate could have treated the petition as complaint under Section 190 of the Code of Criminal Procedure and proceeded with the case as a complaint case which he did not. Therefore, the criminal case on Police report for the offence under Sections 494/495 of the Indian Penal Code cannot lie.

Accordingly, the entire proceeding in respect of Sankrail Police Station Case No. 386/2011 dated 20th July, 2011 and corresponding G. R. Case No. 3749/2011 be quashed being not maintainable.

The instant revision is, thus, **disposed of**.

(Bibek Chaudhuri, J.)