

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. - 2834 of 2018****IN THE MATTER OF****Benumadhab Sahoo & Ors.****Vs.****The State of West Bengal & Anr.**

**For the petitioner : Mr. Anirudhho Bhattacharyya, Adv.,
Ms. Suchitra Chatterjee, Adv.,**

**For the opposite Party : Mr. Sanjib Bandyopadhyay, Adv.,
Mr. Ashok kr. Singh, Adv.
Mr. Biswajit Dutta, Adv.**

For the State : Ms. Sreeparna Das, Adv.,

Judgment on : 15.11.2022

Subhendu Samanta, J.

This is an application U/s 482 of the Code of Criminal Procedure for quashing a criminal proceeding of Belda P.S. Case No. 166 of 2017 dated 08.07.2017 U/s 498A/325/307/354/354B/406/34 of IPC read with Section 3/4 of the Dowry Prohibition Act 1961 pending before the Learned CJM Paschim Medinipur.

The brief fact of the case is that the present petitioners are the husband and in-laws of the opposite party No. 2 of the instant case. Marriage between the opposite party No. 2 and petitioner No. 2 was solemnised in the year 2008. There are some matrimonial disputes and parties started living separately. One application for mutual divorce was filed before the Learned District Judge, Paschim Medinipur U/s 13B of Hindu Marriage Act. The Matrimonial Suit U/s 13B of Hindu Marriage Act was dismissed for default. This FIR was lodged by the de facto complainant /O.P. 2 on 08.07.2017. Police conducted investigation and submit charge sheet against all the petitioners.

Learned Advocate for the petitioner submitted before this court that marriage between the parties was solemnised in the year 2008. Thereafter due to some matrimonial dispute they started living separately and during that time one matrimonial suit was filed before the Learned District Judge, Paschim Medinipur, being MAT Suit 959 of 2012 U/s 13B of Hindu Marriage Act for dissolution of the Marriage on mutual consent.

He also submitted that on the petition of mutual consent it would be revealed that the parties were living separately since 25.07.2011.

After initiation of this case the petitioner appear before the Hon'ble High Court for anticipatory bail wherein vide order dated 10.11.2017 in CRR No. 1085 of 2017. This High Court allowed the anticipatory bail of the petitioner No. 2 with the finding that the petitioner and the de facto complainant are residing separately for a long period.

He further pointed out that the allegation in the FIR is concocted and false. Alleged date of torture as mentioned in the FIR is on 30th November 2016 and the FIR was filed only on 08.07.2017. There are long delay and the FIR having no explanation of such delay. Thus the fact of the FIR is not believable. He again pointed out that during the course of investigation the I.O. has collected the materials in connection with this case. MC collected by the I.O. in connection with the alleged torture is dated 03.08.2012. Thus the MC is not co-related with the alleged torture stated in the FIR. The fact in

the FIR as well as the alleged torture itself proves that the FIR is false one and it can not be sustained. The FIR is harrassive and motivative only to harass the present petitioner. Thus, the FIR need be quashed.

Learned Advocate appearing on behalf of the state submitted that investigation of this case is ended in charge sheet. The C.D. reflected sufficient materials to prove the prima facie commission of offence by the each and every petitioner. The I.O. has submitted a charge sheet on the basis of collected evidences. The matters raised by the Learned Advocate for the petitioner is the factual matters which cannot be entertained at this stage. She also argued that the petitioner may appear before the Learned Court below with a prayer for discharge. The petition for quashing the instant FIR cannot be entertained at the stage.

Learned Advocate appearing on behalf of the opposite party submitted that the marriage between the parties solemnised in the year 2008. The de facto complainant was driven out from her matrimonial home in 2011. The proposal the mutual of divorce was not materialised. The fact of the FIR goes to suggest that the de facto complainant was mercilessly tortured by the petitioners at her matrimonial home on the alleged date of incident. The police submitted charge sheet against all petitioners so at this juncture this court can not entertain the application of the petitioner for quashing the FIR.

Heard the Learned Advocates; perused the FIR as well as the charge sheet. It was alleged in the FIR that the petitioners inflicted torture upon the opposite party No. 2 on the alleged date of incident. The police took up the investigation and after conclusion of investigation the police submitted charge sheet. The Charge sheet reflected, during the course of investigation I.O. has collected sufficient materials including the statement of available witnesses.

Learned Advocate for the petitioner pointed out some materials at the stage that the parties were living separately since 2011 and alleged date of incident is of 2016, the evidence collected by the I.O. that is the MC

collected by I.O. supporting the fact of torture is of year 2012. On the basis of these grounds petitioners are before this court with a prayer of quashing the FIR because the fact of the FIR is false and purposive.

This Criminal case was initiated on the basis of a petition of complaint thereafter the investigation was conducted by the police. After completion of investigation, police submitted a charge sheet. At this stage some discrepancies in the evidences is pointed out before this court. Assessing the valuability and acceptability of those evidences by this court would tantamount the conduction of a mini trial; in doing so, this court has to make up an opinion that some document is or is not correct in the perspective of the particular case; but the such type of observation and mini trial is not permissible. Any findings of this court regarding value of evidences collected by the I.O. would no doubt affect the subsequent procedure before the Ld. Magistrate.

This Court is now exercising inherent jurisdiction in the interest of justice and to prevent the abuse of the process of law. The finding of this court at the time of passing order of anticipatory bail is of separate perspective.

Considering the entire circumstances I am of a view that the petition U/s 482 of the Cr.P.C for quashing the Criminal proceeding at this stage is meritless.

In a result thereof the instant CRR is dismissed.

Connected CRAN application if any, is also disposed of.

Order of stay passed by this Court if any, in connection with this Criminal case is also vacated.

(Subhendu Samanta, J.)