

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

Present :

The Hon'ble Justice Ajoy Kumar Mukherjee

CRR 3102 of 2019

Sri Tamal Krishna Ghosh

-vs-

The State of West Bengal & Another

For the petitioner : Mr. Animesh Paul

For the State : Mr. Prasun Kumar Dutta
Md. Kutubuddin
Mr. Santanu Deb Roy

Heard On : 06.07.2022

Judgment On : 12.07.2022

Ajoy Kumar Mukherjee, J.

1. The present revisional application has been directed by the petitioner with a prayer to quash proceeding being Basirhat Police Station Case No. 422 dated 05.05.2019 under Sections 341/323/325/354/506 of the Indian Penal Code pending before learned additional Chief Judicial Magistrate, Basirhat, North 24 Parganas.

2. It has been contended in the revisional application that the petitioner got married with one Prama Ghosh (Dey), who is the daughter of de-facto complainant/Opposite Party No.2 in the year 2010 and after solemnization of the said marriage, the petitioner along with his wife started living as husband and wife.

3. The petitioner's wife used to visit her paternal home on every interval of 2-3 days and at the instigation of the parents, petitioner's wife left her matrimonial home on 05.04.2018 at her own volition and since thereafter she had been residing at her parental home. The petitioner made several attempts to get her back, but all were in vain.

4. The petitioner also filed a suit for restitution of conjugal rights but in that suit the petitioner's wife appeared and prayed for decree of divorce by way of counter claim. As a counterblast of said Matrimonial Suit the petitioner's wife lodged complain on 28.07.2018 against the petitioner on the basis of which one proceeding was initiated against petitioner u/s 498A/307/328/201 of Indian Penal Code. After completion of investigation, police submitted charge sheet in the said case under Section 498A of the Indian Penal Code.

5. It is submitted on behalf of complainant that on 05.05.2019 at about 7.20 P.M., when the petitioner herein was going through the village namely Asthana Road, where the Opposite Party No.2 / defacto complainant resides, the opposite party No.2 along with his wife and daughter, on seeing the petitioner, started to abuse him with filthy language and on protest, the opposite party No.2 took an iron rod from his house and assaulted the petitioner with the said iron rod. The petitioner's wife slapped the petitioner. They also broke the spectacles of the petitioner and looted his personal belongings. The opposite party No.2 continued assaulting the petitioner by the said iron rod and when the petitioner fell down on the road, the opposite party No.2 attempted to throttling petitioner.

6. The petitioner was merciless assaulted and petitioner sustained bleeding injuries and was admitted to hospital. Thereafter, the mother of the petitioner had lodged a written complain on 06.05.2019. However, no steps were taken in

that regard and for which the petitioner made an application under Section 156(3) of the Code of Criminal Procedure in the Court of learned additional Chief Judicial Magistrate, Basirhat, North 24 Parganas.

7. Learned Magistrate was pleased to direct the I.C., Basirhat P.S. to register an F.I.R. on the basis of the said complain.

8. Since the police authorities were not registering the FIR, petitioner's mother, namely, Tripti Ghosh filed a Writ Petition before the Hon'ble High Court, which was registered as W.P. No. 16400 (W) of 2019 and during pendency of the said Writ Petition, a notice dated 29.08.2019 was served upon the petitioner wherefrom he came to know that an FIR being Basirhat P.S. Case No. 778 dated 06.08.2019 under Section 341/325/427/307/379/504/34 of the Indian Penal Code has been registered on the basis of the said complain dated 06.05.2019, lodged by the mother of the petitioner.

9. At the same time the opposite party No.2 has managed to lodge present false complain against the petitioner herein in connection with self-same incident, upon which present proceeding vide Basirhat P.S. Case No. 422 dated 05.05.2019 under Sections 341/323/325/354/506 of the Indian Penal Code being G.R. Case No. 2723 of 2019 was started.

10. The allegation levelled in the FIR of present proceeding is that on 05.05.2019 at about 7.30 p.m., the opposite party No.2 at the time of leaving his house saw that the petitioner herein was passing therefrom and the petitioner abused opposite party no. 2 with filthy languages and showed his legs to the opposite party No.2. On query for such behavior, the petitioner rushed on the opposite party No.2 and then the younger daughter of the opposite party No.2 came outside to protest, when the petitioner herein rushed to her and tried to kill her by a brick and also injured her. The opposite party

No.2 when tried to save his daughter, the petitioner herein assaulted the opposite party No.2 also with fists and blows and kicks and also by brick and thereafter the local people helped them to save their lives.

11. After completion of investigation, charge sheet has already been submitted in the present Basirhat Police Station Case No. 422 dated 05.05.2019 under Sections 341/ 323/ 325/ 354/ 506 of the Indian Penal Code against the petitioner.

12. Learned Counsel for the petitioner, Mr. Animesh Paul submitted that it would appear from the allegation that there has been a matrimonial dispute between the petitioner and his wife which resulted in registering the present complain against the petitioner. Police has submitted charge sheet under Sections 341/323/325/354/506 of the Indian Penal Code. But the allegation levelled against the petitioner is absolutely false. On the contrary, the truth is that the opposite party No.2 along with his wife and daughter had brutally assaulted petitioner on that day i.e. on 05.05.2019. He further submits that police without making proper investigation has submitted charge-sheet against present petitioner, without having cogent material/evidence and as such the proceeding is liable to be quashed.

13. Perused the petitioner's complaint and the materials available in the Case Diary. In the written complaint, it has been specifically alleged that on 05.05.2019 at about 7.30 p.m. Present petitioner assaulted defacto complainant and her daughter with fists and blows, kicks and also by brick bat and for which they had sustained injuries. It is further alleged that the defacto complainant and her daughter were hospitalized and got treatment from Basirhat Hospital.

14. During investigation, it appears that police has collected the injury report of Pranga Dey (daughter of the defacto complainant) and also injury report of the defacto complainant, which discloses that petitioner has assaulted daughter of defacto complainant by brick as recorded by concerned medical officer, towards history of assault.

15. Police has recorded statement of witnesses under Section 161 Cr.P.C. during investigation and they have also supported the version of the defacto complainant in connection with the alleged assault made by the petitioner upon the defacto complainant and her daughter.

16. In view of the Judgement passed in ***Bhajanlal Vs. State of Haryana***, reported in **AIR 1992 SC 604** and also in view of subsequent line of Judicial precedents, settled position of law is that it is only when the petition of complaint does not disclose a prima facie cognizable offence or when the allegations in the petition of complaint or the FIR are inherently improbable or absurd or when the petition of complaint or the FIR is *malafide* one intended to harass the opponent or when no evidence of legal character is available or when there is legal bar to the entertainability of the application, the criminal proceedings should be quashed.

17. In the present case as stated above, contents of the complaint and the evidence collected in support of the same during investigation as available in the Case Diary which includes statements recorded under Section 161 Cr.P.C. and the injury report, discloses prima facie cognizable offence against the petitioner, and in the absence of any apparent *malafideness* in lodging complain, I am of the view that this is not a fit case where the proceeding can be quashed invoking power under Section 482 Cr.P.C.

18. Accordingly, CRR 3102 of 2019 is dismissed.

19. However it appears that learned Trial court has fixed next date for framing of charge on 08.03.2023. As such liberty is given to the parties to pray for preponing of the date and in the event such prayer is made, learned Trial Court shall make every endeavour to dispose of the case at the earliest, preferably within a period of one year from this order.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(AJOY KUMAR MUKHERJEE, J.)