

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble JUSTICE BIVAS PATTANAYAK

C.R.R. 3124 of 2017

Santosh Kumar Sengupta & Others

versus

Atreyee Sengupta

For the petitioner: Mr. Suman De, Adv.

For the Opposite Party: Mr. Palash Mukherjee, Adv.

Heard on: 22.08.2022.

Judgment on: 15.09.2022

BIVAS PATTANAYAK, J. : –

1.This revisional application under Section 482 of the Code of Criminal Procedure has been filed by the petitioners for quashing of proceeding being complaint case no. AC-1496 of 2015 under Section 498/406/34 of the Indian Penal Code pending before the learned Judicial Magistrate, 1st Court, Alipore, 24-Parganas (South).

2.The brief fact of the case is that the opposite party-complainant filed a complaint against the petitioners-accused persons on 05.02.2015 before the learned Additional Chief Judicial Magistrate at Barasat, 24-Parganas (North) with the contention that on 27.11.2014 she was married to one Surajit

Sengupta according to Hindu Rites and Customs and the said marriage was subsequently registered. At the time of marriage various articles including gold ornaments were given. However after few days of her marriage she was subjected to torture both physically and mentally over demand of additional dowry. The petitioners-accused persons threatened the opposite party-complainant and pressurized her for taking divorce from her husband and the life of the complainant and her husband became miserable due to illegal activities of the petitioners-accused persons. On such allegation, inter alia, the complaint case being no. AC 64 of 2015(TR 52 of 2015) came to be registered (presently pending before the Learned Judicial Magistrate, 2nd Court, Barasat, North-24-Parganas). On similar set of facts the opposite party-complainant filed another complaint against the petitioners-accused persons on 11.03.2015 before the learned Additional Chief Judicial Magistrate at Alipore, 24-Parganas (South) registered as complaint case no. AC-1496 of 2015. However, the opposite party-complainant neither in her complaint nor during her examination on S/A under section 200 of the Code disclosed before the learned Judicial Magistrate at Alipore of her earlier complaint pending before Learned Judicial Magistrate, at Barasat. Being aggrieved by and dissatisfied with the proceeding pending before the learned Judicial Magistrate, 1st Court, at Alipore being Complain case no. AC-1496 of 2015, the petitioners have filed the present revision for quashing of said proceeding being subsequent one.

3. Mr. Suman De, learned advocate appearing on behalf of the petitioners submitted that the opposite party-complainant on the self-same cause of action filed two complaint cases one before the learned Additional Chief Judicial Magistrate at Barasat, being complaint case no. 64 of 2015 and another being the present proceeding before learned Additional Chief Judicial Magistrate at Alipore, presently pending before Judicial Magistrate, 1st Court, Alipore. The opposite party-complainant in the present proceeding, which is subsequent one, did not disclose before the Court about the prior complaint and as such the process issued in the subsequent proceeding arising out of self-same cause of action if allowed to continue will amount to abuse of process law and requires to be quashed for the interest of justice. In support of his contention he relied on the decision of Hon'ble Supreme Court passed in ***T.T Antony versus State of Kerala*** reported in ***(2001)6 SCC 181***. In the light of his aforesaid submissions he prayed for quashing of the proceeding pending before learned Judicial Magistrate, at Alipore.

4. None appeared on behalf of opposite party-complainant in spite of service of notice when the matter was called on and heard on 10.06.2022. Subsequent thereto for further clarification the matter was fixed under the heading '*To be mentioned*' and learned advocate for the petitioner was directed to file supplementary affidavit disclosing the status of the proceeding before the trial court. On the date of submission of the supplementary affidavit on

22.08.2022 learned advocate for opposite party-complainant appeared and he was also heard.

5. Mr Palash Mukherjee, learned advocate for the opposite party-complainant submitted that the cause of action of both the cases is different and as such those are maintainable in the eye of law. There is no double jeopardy as the facts and circumstances of both the cases are dissimilar. In the light of his aforesaid submissions he prayed for dismissal of the instant revisional application.

6. Before delving into the merit of this application it is profitable to place on record that it was indicated by the petitioners by way of a supplementary affidavit that several case numbers were appearing pertaining to the complaint case no.64 of 2015 before learned Judicial Magistrate, 2nd Court, at Barasat, and a report was called for from the concerned court. As per the said report dated 30th May, 2022 the case numbers C-64 of 2015, C-65 of 2015, C-355 of 2015, C-734 of 2015 and TR-52 of 2015 relates to the same case and the case is at present progressing with the number C-355 of 2015.

7.It is found from Annexure 'D' at page 29 of the revisional application that Complaint Case being No. 64 of 2015 (presently numbered as C-355 of 2015) was filed by the opposite party-complainant before the learned Additional Chief Judicial Magistrate, Barasat, North-24-Parganas on 5th February, 2015. Further Annexure 'A' at page 17 shows that Complaint

casebeing no. AC-1496 of 2015, which is the subject matter of the present revision,was filed by the opposite party-complainant before the learned Additional Chief Judicial Magistrate at Alipore, 24-Parganas (South) on 11th March,2015. Thus, the present proceeding being Complain case no. AC-1496 of 2015 pending before the learned Judicial Magistrate, 1st court, at Alipore is a subsequent one. On collating the averments of both the complaints it is found that the assertions, allegations made in the subsequent complaint are identical and similar in nature and the narrationsare replication of the previous one. The dates of the cause of action are also the same excepting one additional date has been added to the subsequent proceeding. The subsequent complaint is silent with regard to the pendency of an earlier complaint. The opposite party-complainant neither during her examination under section 200 of the Code on 28.06.2015 nor during enquiry under section 202 of the Code disclosed about her earlier complaint. Accordingly, in my view the subsequent complaint case being No. AC-1496 of 2015 pending before the learned Judicial Magistrate, 1st Court, Alipore, South-24-Parganas, based on identical facts and allegations as of the earlier complaint, if allowed to continue would be a clear abuse of process of law and process of court and therefore it needs to be quashed to secure the ends of justice.

8. Learned Advocate for the petitioners relying on the decision of Hon'ble Supreme Court passed in ***T.T Antony (supra)*** contended that the subsequent complaint is not sustainable in the eye of law. It appears the issues that fell

for consideration before the Hon'ble Supreme Court was whether registration of a fresh case in the nature of a second FIR under Section 154 of the Code of Criminal Procedure was valid and could form basis of a fresh investigation and the Hon'ble Court observed that where police transgresses its statutory power of investigation the High Court under section 482 of the Criminal Procedure Code or Articles 226/227 of the Constitution or Supreme Court in an appropriate case can interdict the investigation to prevent abuse of process of the court or otherwise to secure the ends of justice. Be that as it may, the aforesaid decision of the Hon'ble Court does not deal with the aspect of maintainability of a subsequent complain case on the self-same cause of action and issuance of process thereof under Section 204 of the Code.

9. In view of the aforesaid discussion, the criminal revisional application being **CRR 3124 of 2017** is allowed. The criminal proceeding being Complain case being no.AC-1496 of 2015 pending before the learned Judicial Magistrate, 1st Court, Alipore, 24-Parganas (South), thus, stands quashed.

10. It is however made clear that the observations made hereinabove shall not have any bearing on the rights and contentions of the parties in the earlier proceeding being C-64 of 2015 (presently numbered as C-355 of 2015) pending before learned Judicial Magistrate, 2nd Court, at Barasat, 24-Parganas (North).

11. Let a copy of this order be sent to the learned trial court for information.

12. Urgent Photostat Certified copy, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

(Bivas Pattanayak, J)