

CRR 3325 of 2019

In the matter of : Aditi Saha

.....Petitioner

Mr. Dipanjan Chatterjee
Mr. Avirup Chatterjee ...for the Petitioner

Mr. Abhra Mukherjee
Mr. Dipankar Mahata ...for the State

Status report so submitted on behalf of the learned advocate for the State, be kept with the record.

This revisional application has been directed for quashing of proceedings pending before the learned Principal Magistrate, Juvenile Justice Board, Salt Lake, arising out of Lake Town Police Station Case no. 139 of 2013 dated 21st April, 2013 under Section 498A/406/34 of the Indian Penal Code read with Section 3 and 4 of the Dowry Prohibition Act, lodged by opposite party no. 2.

The petitioner herein is the step sister-in-law of opposite party no. 2 and the husband of the opposite party no. 2 namely Avik Saha was born on the wed lock between the father of the petitioner being Sri Arabinda Saha and one Malabika Saha. The said Avik Saha had been residing separately from the said Aravinda Saha along with his mother, Malabika Saha since 28th Novembe, 1992 when the mother of said Avik Saha got separated from the said Aravinda Saha and at that point of time, the age of the said Avik Saha was just nine years. Malabika Saha being the mother of said Avik Saha filed an application for dissolution of

marriage by a decree of divorce before the Family Court at Calcutta and their marriage got dissolved. After dissolution of the said marriage, the father of the petitioner Sri Arabinda Saha had no contact with Malabika and Avik. Subsequently Arabinda Saha married Smt. Molly Saha, and due to said wedlock in between Arabinda and Molly petitioner was born. The petitioner since the childhood had never known or met Avik Saha, the husband of opposite party No. 2 nor did the said Avik Saha ever resided with the family of the petitioner.

The learned advocate for the petitioner Mr. Dipanjan Chatterjee submitted that at the time of lodging complaint, the opposite party no. 2 was residing at a rented accommodation at 44, Ajoy Nagar, Dum Dum, Kolkata-74. However, in the complaint, it has been wrongly contended that she had been residing at premises no. 932A/10/2, Jessore Road, Kalindi, Kolkata-89.

The opposite party no. 2 and her husband Avik Saha (petitioner's step brother) never resided with the family of the petitioner. So far as the petitioner is concerned. the petitioner prior to the institution of the case being Lake Town Police Station case no. 139 of 2013 had the occasion to meet the opposite party no. 2 only once i.e., on the day of Annaprasan Ceremony of the daughter of opposite party no. 2.

The allegations levelled in the written complaint by the opposite party no. 2 is that marriage between the opposite party no. 2 and said Avik Saha was a love marriage and the father of the petitioner did not have consent of such marriage and as such

after marriage opposite party no. 2 along with her husband Avik started to reside at a rented accommodation. After few days, the father of the petitioner requested said Avik Saha to reside at the same house and since Avik Saha was willing to do so, the opposite party no. 2 started residing with the parents of the petitioner. It is the allegation of the opposite party no. 2 that the opposite party no. 2 was subjected to mental and physical cruelty at the hands of the petitioner and her parents. The parents of the petitioner and the petitioner asked her to bring money from her father. The opposite party no. 2 further alleged that the parents of the petitioner took all her ornaments which she received from her parental house at the time of her marriage.

The investigating officer after completion of the investigation submitted charge-sheet.

Learned advocate for the petitioner Mr. Chatterjee argued that the learned Judicial Magistrate, Bidhannagar without any application of judicial mind, took cognizance against the petitioner vide order dated 7th July, 2015. The petitioner at the time of taking cognizance was a minor. Actually, the opposite party no. 2 had never, prior to the institution of the complaints, resided at 932A/10/2, Jessore Road, Kalindi, Kolkata and the said complaint was filed after lapse of five months from the alleged date of occurrence. There is no question of the petitioner along with her parents inflicting cruelty upon the opposite party or taking away her stridhan articles. The entire story put forth by the opposite party is false and fabricated. No specific material available against the petitioner so as to justify continuance of the

impugned proceedings as against the petitioner. The first information report and the materials on record, do not disclose the essential ingredients of offence against the minor/petitioner punishable either under Section 498A/406/34 of the Indian Penal Code or Section 3 or 4 of the Dowry Prohibition Act. Mr. Chatterjee further argued that petitioner does not come under “relative of husband” and furthermore it is not at all believable that a minor girl, who never resided with opposite party no.2, inflicted any kind of torture or has committed any kind of criminal breach of trust and a minor girl’s future career is going to be ruined , if the continuance of trial is allowed against present petitioner and as such the criminal proceedings against the present petitioner is not maintainable and liable to be quashed. Learned Advocate representing the state concedes that during investigation no incriminating material could be collected against present petitioner.

Perused the materials in the case diary including the complaint, it appears that only in one sentence in the written complaint, an omnibus statement has been made that after some days of marriage her father-in-law, step mother-in-law and step sister-in-law (present petitioner) started to inflict physical and mental torture upon her and at the end of the written complaint, it has been prayed by complaint /opposite party no. 2 for taking action against her step mother-in-law, father-in-law and the present petitioner, who is her step sister-in-law.

On perusal of the entire case diary, I do not find any injury report in support of inflicting physical cruelty by the present

petitioner. Prosecution has only recorded statement of three witnesses under Section 161 of the Code of Criminal Procedure out of which no one has uttered a single word against the present petitioner and only general allegation against present petitioner has been levelled in a single sentence in the complaint without specifying what specific role had been played by the present petitioner in committing the alleged crime. In this context, relevant observations made by Hon'ble Apex Court in **Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others** reported in **2022 SCC OnLine SC 162** need to be quoted,

“18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.”

“19. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that ‘all accused harassed her mentally and threatened her of terminating her pregnancy’. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.”

Considering the facts and circumstances of the case, it appears to me that the entire allegations levelled, against other

accused persons but not against the present petitioner who was admittedly a minor at the relevant point of time. Considering the fact that there is not even a remote chance of conviction against the present petitioner in view of the materials available so far in the record and that if the present proceedings against present petitioner is allowed to be continued, it will be a mere abuse of the process of the court, let all further proceedings pending before the Lake Town Police Station Case no. 139 of 2013 dated 21st April, 2013 under Section 498A/406/34 of the Indian Penal Code read with Section 3 and 4 of the Dowry Prohibition Act in respect of the present petitioner is hereby quashed.

CRR 3325 of 2019 is accordingly allowed.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)