

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

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 3592 of 2019

Sri Alup Kumar Bhattacharjee & anr.

-vs-

The State of West Bengal & anr.

For the Petitioners	: Mr. Souvik Mitter : Mr. Tapas Maity
For the Opposite Party	: Mr. Bibaswan Bhattacharyya
For the State	: Mr. S.G. Mukherjee, Ld. P.P. : Mr. Arijit Banerjee : Mr. Siladitya Banerjee
Heard on	: 13.6.2022
Judgment on	: 21.06.2022

Ajoy Kumar Mukherjee, J.

1. This revisional application has been directed under Section 482 of the Code of Criminal Procedure for quashing of the complain in connection with MDP All Women Police Station case 16 of 2018 dated 10.3.2018 under Sections 498A/406/509 of the Indian Penal Code read with section 3, 4 of the Dowry Prohibition Act and also for setting aside the order dated 30th August, 2019

and 31st September, 2019 by which the learned trial Court has passed order relating to custody of the seized articles.

2. The petitioner no. 1 and the opposite party no. 2 herein got married on 20th November, 2006 and they are blessed with a child who was born on 28th August, 2008. Subsequently, the opposite party no. 2 instituted a matrimonial suit for dissolution of marriage and said matrimonial suit filed by opposite party/wife was decreed on contest in her favour on 6th February, 2015. Though at the time of marriage, neither the petitioner no. 1 nor his family members demanded any dowry from the parents of opposite party no. 2, but some gold ornaments were given to the opposite party no. 2 by her parents and opposite party no. 2 had taken all those ornaments. She left her matrimonial home in the year 2012. After obtaining divorce decree, opposite party no. 2 initiated two proceedings, one under Section 125 of the Code of Criminal Procedure and another under the Domestic Violence Act. In spite of several proceedings initiated by respondent no. 2 against the petitioner no. 1, the petitioner tried to make reconciliation but all were in vein. Meanwhile, the opposite party no. 2 lodged another complain before the Kotwali Police Station on 10.3.2018 alleging that at the time of marriage, some dowry was demanded by petitioner's husband and other family members. Petitioner's husband and other family member had inflicted torture demanding more money. It is further alleged that the aforesaid articles were snatched from her and kept with the petitioner no. 2 and his wife. It is further alleged that on 11.2.2018, opposite party no. 2/wife went to the matrimonial home to get back streedhan articles from her husband

but her brother-in-law did not allow her to enter into the house. She informed the said incident to her advocate and as advised, she lodged a complain before the local police station. However, the investigating officer without making proper enquiry, started a case being MDP All Women Police Station case 16 of 2018 as above.

3. Being aggrieved by the initiation of proceeding on the basis of complain, the present petitioner preferred this revisional application for quashing of the said proceeding. During pendency of this revisional application, the investigating officer submitted charge-sheet against the petitioners in connection with the aforesaid MDP All Women Police Station case No.16 of 2018 dated 10.3.2018 under Sections 498A/406/509 of the Indian Penal Code.

4. Learned advocate for the petitioner Mr. Souvik Mitter strenuously argued that the investigating officer failed to establish any material in support of the allegation of torture made in the complaint dated 10.3.2018 by opposite party no. 2. Since 2012, none of the petitioners and their family members were connected in any manner with the opposite party no. 2 and the matrimonial tie dissolved by a decree of divorce. On 6.2.2015, the investigating officer during investigation seized 33 number of articles from the house of the petitioners as per claim of the opposite party no. 2, claiming those properties as streedhan property though some of the seized valuable articles belong to the petitioner. The investigating officer did not find any other independent witness except complainant's father in support of the allegation of torture upon the

complainant by the petitioner and the said complain filed without any cause of action and as such it is liable to be quashed.

5. Mr. Mitter further argued that the allegation is hopelessly barred under Section 468 of the Code of Criminal Procedure and the allegation levelled on the basis of alleged occurrence dated 10.3.2018 does not disclose any offence under Section 498A of the Indian Penal Code.

6. Mr. S.G.Mukherjee, learned Public Prosecutor appearing on behalf of the State argued that limitation under Section 468 of the Code of Criminal procedure is not absolute bar but it is always subject to Section 473 Code of Criminal procedure and learned trial court after considering the materials had taken cognizance and at the time of taking cognizance he must have considered the elements as required to consider under Section 473 of the Code of Criminal procedure, in case of a continuing offence.

7. Mr. Mukherjee further argued that contents of the written complain clearly attracts Section 406 of the Code of Criminal procedure and there is no scope to say that the allegation as levelled on the basis of occurrence dated 10.3.2018 does not disclose any offence under Section 406 of the Indian Penal Code, in respect of present petitioners.

8. In this context, it is to be mentioned that it is not a private complaint but it has proceeded on the basis of police investigation and the charge-sheet in the case has already been submitted and the evidence collected during investigation does support the basic allegation made in the original FIR at least disclosing offence under Section 406 of the Indian Penal Code. The First

information report also specifically states that on the date of occurrence when she had gone to her matrimonial home to collect that articles, which was given to her at the time of marriage, at that time she was assaulted and the said articles were lying in the custody of the accused persons. Such allegation of illegal withholding of the complainant's valuables and belongings by the accused persons cannot be overlooked at this stage and truthfulness of the allegation would be adjudged during trial and as such it warrants consideration as and when the appropriate stage will arrive at the trial. Moreover, by the interim order dated 30.8.2019 and 30.9.2019, only the interim custody of the articles were given which by no means of imagination can confer ownership upon the person who obtained the interim custody. It is the civil court who alone has got the jurisdiction to decide the question of ownership in an appropriate proceeding and as such the question of setting aside the impugned order by which the interim custody was given is neither illegal nor it confers any title upon the opposite party no. 2 and as such setting aside the said order does not arise at this stage.

9. In view of the above and also in view of the materials emerged against the petitioner in the First information report it cannot be said that it does not disclose any cognizable offence or makes out no case at all against the petitioners.

10. For the aforesaid reasons, this court finds no impropriety or illegality in the proceedings or in the impugned orders passed by the learned trial court and accordingly, the revisional application is liable to be dismissed.

11. However, the learned trial court is requested to proceed with the trial as expeditiously as possible and to make all endeavour to complete the trial preferably within a period of one year from the date of framing of charge.

12. CRR 3592 of 2019 is accordingly dismissed.

13. However this order will not preclude the petitioners from raising all the issues raised herein, including the issue of limitation before the trial court at the time of framing charge or if the charge has already been framed, for alteration of charge, if any.

There will be no order as to costs .

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

(AJOY KUMAR MUKHERJEE)