

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

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 1618 of 2020

Prasanta Dhar

-vs-

State of West Bengal & Ors.

For the Petitioner : Mr. Fazlur Rahman
Mr. Sourav Paul

For the State : Mr. B.K. Roy
Ms. Baisali Basu

For the Opposite Party No.2: Mr. Sourav Chatterjee
Mr. Soumya Nag

Heard on : 11.7.2022

Judgment on : 19.07.2022

Ajoy Kumar Mukherjee, J.

1. The present revisional application has been directed for quashing the impugned FIR being Kalighat Police Station Case No.94 of 2020 and the on going proceeding registered as CGR Case No.2304 of 2020 initiated on the basis of the FIR, lodged by opposite party no.2 /defacto complainant Rajiv Sarkar.

2. The defacto complainant moved an application under Section 156(3) of the Code of Criminal Procedure, 1973 before the learned Chief Judicial Magistrate at Alipore being No.53 of 2020 and upon considering the said application, learned Magistrate was pleased to direct the Officer-in-Charge of

the Kalighat Police Station to start investigation treating the petition of complaint as FIR.

3. Pursuant to the said direction, the aforesaid Kalighat Police Station Case No.94 of 2020 corresponding to CGR Case No.2304 of 2020 was initiated. The present petitioner is acquainted with the accused no.1 Sikha Biswas during her college life and initial service life and after passing out from the college, she started residing as a tenant under the landlordship of the petitioner. The accused no.1 as a Bengalee lady used to address the petitioner as her Dada (elder brother) and petitioner never claimed nor represented himself to be a full blooded brother or kin and kith of the accused nos.1 and 2.

4. Sometime in the year 2015, accused no.1 Sikha had surrendered the tenancy at the premises and since then the petitioner did not have any touch with the accused no.1 except some rare occasions. The petitioner does not have any personal acquaintance with the defacto complainant. However, he has come to know about the defacto complainant through the accused no.1 Sikha as the husband of the accused no.1. The petitioner has been falsely implicated in the criminal proceeding which has arisen out of a matrimonial dispute between the defacto complainant Rajiv and accused no.1.Sikha. In the written complaint, defacto complainant has allegedly canvassed a matrimonial dispute with accused no.1 and also canvassed an alleged story of the participation of the petitioner who has merely a formal acquaintance with the accused no.1 in affairs relating to negotiation of marriage between the defacto complainant and the accused no.1. The defacto complainant has further canvassed a concocted story whereby he has alleged that the petitioner participated in torturing the mother of the defacto complainant.

5. It is further alleged against the petitioner that the petitioner herein involved in a racket and the petitioner had allegedly threatened the defacto complainant to kill by administering spurious substances.

6. It is further submitted that the petitioner is neither family member of the accused no.1 Sikha nor has any relationship with her and the acquaintance between the petitioner and the accused no.1 is a very formal one. The defacto complainant is a police officer attached in the Kolkata Police Force and possibly on account of his matrimonial discord, he has started the vindictive criminal proceeding against the accused no.1, where the petitioner has been made a scapegoat. As the parties are residing separately, there is no chance of inflicting torture by the present petitioner upon the mother of defacto complainant. The petitioner was neither a witness to the matrimony of the accused no.1 nor a participant in the alleged forgery of court document as claimed by the defacto complainant. Therefore, arraying the petitioner as an accused in the aforesaid complaint can be safely inferred with some malicious intent on the part of the defacto complainant. The allegations made out against the petitioner in the complaint under reference do not constitute of an offence either under the general penal laws or under any special enactment and as such, the criminal proceeding against the present petitioner is vexatious and harassive and the impugned FIR is based on surmise and conjecture and also inherently improbable and absurd and for which the FIR being Kalighat Police Station Case No.94 of 2020 along with impugned proceeding registered as CGR Case No.2304 of 2020 is liable to be quashed.

7. Mr. Sourav Chatterjee, learned counsel appearing on behalf of the opposite party no.2,/defacto complainant submits that in the early part of the year 2015 the defacto complainant, namely, Rajib Sarkar who is a government

employee was desirous in effecting his marriage and being attracted on an advertisement for match making, published in a Bengali daily contacted over a mobile phone number mentioned in the said advertisement. It is mentioned in the written complaint lodged by defacto complainant that the complaint mentioned accused no.2, namely, Sunil Biswas who had posed and portrayed himself as the elder brother of the alliance or intending bridegroom being the accused no.1, Smt. Sikha Biswas and accordingly, had a conversation with the mother of the petitioner over match making and being prima facie satisfied with the details and information percolated by the accused, the mother of the petitioner had proceeded with further conversation.

8. Mr. Chatterjee further submits that the conversation of the aforesaid accused persons was so convincing that the defacto complainant never felt it necessary to cause indepth enquiry and placing reliance upon their information, a date of marriage was fixed on 10.8.2015 and the marriage was solemnized under the Special Marriage Act. Few days after marriage when the complainant and accused no.1 had gone honeymoon trip then the accused no.1 started showing her true colour and in disguise of offering few dry fruits, she has administered spurious and poisonous substances to the petitioner causing immense physical problem and other discomforts to the petitioner throughout the trip. Subsequently, the accused no.1 Sikha started flaring up quarrels with the petitioner and his widow mother and sister on different flimsy pretext and further went on pressurizing the petitioner to be separated from her mother and sister and for obvious reason the petitioner had refused to oblige her. The accused no.1 Sikha and her inmates being accused nos.2 Sunil Biswas and accused no. 3 Prasanta Biswas @ Prasanta Dhar (present

petitioner) had perpetrated immense mental and physical torture to the widow mother and sister of the petitioner.

9. After recovery from mental trauma, the defacto complainant Rajib Sarkar started causing query regarding the genuinity of the information given by the accused no.1 and her purported family comprising of aforesaid accused nos.2 and 3 in course of such negotiation of marriage. It reveals that the accused no.1 had given a false information in the paper advertisement claiming herself as a divorcee and in course of registration of marriage and as well as in course of negotiation, they have presented a purported photocopy of an order passed by the Additional District and Sessions Judge, 2nd Court at Barasat in MAT Suit No.113 of 2013 which reveals that a decree of divorce was effected in between the parties namely, one Partha Chatterjee and accused No. 1 Sikha Biswas on 27.01.2014 in a proceeding being MAT Suit No.113 of 2013 which was pending for disposal before the said Court and on further scrutiny it was detected that the parties therein in said Mat Suit 113/2013 before the said court is completely different from the parties shown in the photocopy of the certified copy so handed over by the accused no.1 and her two purported brothers being accused nos.2 and 3 (present petitioner) in course of negotiation and registration of marriage.

10. Actually, the MAT Suit No.113 of 2013 which was disposed of by the learned Additional District and Sessions Judge, 2nd Court, Barasat, the parties were Shri Kumaresh Mondal and Smt. Sucharita Mondal (Modak) and the said case was disposed of on a different date, i.e., on 03.02.2014. Having possession of the actual certified copy of the order passed in said proceeding, it became clear that accused no.1 and her two purported brothers being accused nos.2 and 3 (present petitioner) had adopted and resorted the way of falsehood

to procure such purported marriage in between the accused no.1 Sikha and the petitioner and thus they had produced forged and fabricated documents in the form of photocopy of certified copy of the court proceeding being MAT Suit No.113 of 2013.

11. Upon presenting and portraying the same as genuine, all the three accused persons including the present petitioner have not only deceived and cheated the petitioner and his family but also committed offence upon a Government appointed marriage registrar for causing procurement of such marriage and further by the strength of marriage, the accused no.1 and her two associates, namely, accused nos.2 and present petitioner(accused no.3) had procured substantial amount of gold ornaments and other valuables from the family of the petitioner in the form of gift or purported stridhan.

12. Mr. Chatterjee on behalf of the opposite party no.2 further submits that the present petitioner is the member of a well-organized racket and the members of the racket are habituating in forgery and they cooked up documents and by the strength of such forged and cooked up documents they procure different important document from different persons. Investigation has already been ended in charge-sheet and as such, the question of quashing the FIR does not arise and this is also because substantial materials have been collected by the investigating officer during investigation.

13. In this context, learned counsel for the opposite party no.2 has shown observation passed by this High Court in different proceedings, namely, in WPA 7073 of 2021, CRM 10239 of 2020, CRM 10234 of 2020 and also the decision passed by this Court in CRR 1728 of 2020 wherein the co-accused of the said complaint, namely, Sunil Biswas (accused No.2) prayed for quashing the aforesaid proceeding being Kalighat Police Station Case No.94 of 2020 in

connection with the said accused and this Court vide its judgement dated 27.01.2021 was pleased to dismiss said CRR 1728/2020.

14. Mr. B.K. Roy, learned counsel appearing on behalf of the State submits that sufficient incriminating materials had been collected by the investigating officer which shows that the present petitioner along with two accused persons, namely, Sikha Biswas and Sunil Biswas prepared forged judgment copy of the learned Additional District and Sessions Judge, 2nd Court, Barasat and produced the same before the marriage registrar at the time of marriage of accused no. 1 with the complainant and said copy of forged judgment of the Court along with original certified copy of the judgment in MAT Suit No.113 of 2013 has been collected by investigating officer during investigation and kept with the case diary.

15. It is further submitted by Mr. Roy that during course of investigation accused Sikha Biswas and Sunil Biswas were arrested in the case and both are now on court bail but after making several attempts, the present petitioner Prasanta Dhar who is the other accused of the case, still absconding and police has already submitted charge-sheet against all the three accused persons including the present petitioner under Sections 120B/177/181/420/466/467/468/471/474 of the Indian Penal Code showing present petitioner as abscondee.

16. Considered the rival submissions.

17. It appears from the case diary that sufficient incriminating materials have been collected by the investigating officer during investigation against all the three accused persons. The petitioner who has come before the court for quashing the proceeding is F.I.R. named but he had never co-operated with the

investigating agency nor surrendered before the trial court to plead his innocence.

18. On the contrary, the prayer for quashing of same proceeding made by the other co-accused Sunil Biswas who is almost on the same footing has been dismissed by a co-ordinate Bench of this Court in CRR 1728 of 2020 on the ground that investigation of a case is interferable in a case subject to making out a strong case revealing palpable illegality in the institution of a criminal case and since the case under challenge is not of such a nature and dimension in which vigorous and extensive investigation is called for, the Court was not agreeable to the contention as presented by the learned advocate for the petitioner, Sunil Biswas.

19. The said Sunil Biswas being aggrieved by an order of anticipatory bail passed by a Division Bench of this Court preferred a writ application being WPA 7073 of 2021 and a coordinate Bench of this Court dismissed the same with a costs of Rs.20,000/- vide order dated 18.3.2021. Earlier this Court rejected anticipatory bail prayed by other two accused persons, considering the statement of witness as well as documents seized in the course of investigation and also on the necessity of custodial interrogation.

20. The materials collected during investigation goes to show that in the written complaint defacto complainant has specifically alleged about forgery of court's order against accused, Sikha Biswas Prasanta Biswas and the present petitioner Sunil Biswas.

21. It is well settled that at the stage when the High Court considers a petition for quashing criminal proceeding under section 482 of the Cr.P.C., the allegations in the F.I.R. must be read as they stand and it is only if on the face of the allegations that no offence as alleged, has been made out, that the court

may be justified in exercising its jurisdiction to quash. The court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at this stage.

22. The parameter of the jurisdiction under section 482 have been reiterated in a consistent line of authorities and at this stage, it may be material to refer to a recent decision of the Apex Court in ***Rajeev Kourav Vs. Baisahab and others*** reported in **(2020) 3 SCC 317**, wherein Their Lordship is pleased to held:-

“8. It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge-sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.”

23. From a reading of the complaint, it cannot be held that even if the allegations against present petitioner are taken as proved no case is made out, in the complaint allegation of misappropriation of property and allegation of hatching criminal conspiracy in forging document and using the same for unlawful gain has been equally attributed to all the three accused persons including the present petitioner and his role can by no means distinguishable from the role played by other two accused persons in committing the crime as averred in the complaint. The prayer for quashing the same proceeding made by other accused Sunil, who is almost on the same footing with the present

petitioner as per F.I.R. statement, has been rejected. Petitioner herein is still an abscondee as mentioned in the charge-sheet and never faced the proceeding to reveal the truth. The question whether petitioner has infact participated in all the alleged crimes or not is a matter of trial, but at this stage it cannot be said that no case is made out against present petitioner, thus quashing of proceeding before the trial is not permissible.

24. Accordingly, CRR 1618 of 2020 is dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(AJAY KUMAR MUKHERJEE, J.)