

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 19 of 2012
with
CRAN 1 of 2012
CRAN 3 of 2012
CRAN 5 of 2013

GOPA SASTRI
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioner	: Mr. Sourav Chatterjee, Adv. Mr. Satadru Lahiri, Adv. Mr. Bakhtiar Ali Shah, Adv. Mr. Syed Wasim Faruque, Adv.
For the State	: Mr. Swapan Banerjee, Adv. Mr. Suman De, Adv.
For the O.P. No. 2	: Mr. Swapan Mallick, Adv. Mr. Subham Bhakat, Adv. Ms. Sima Biswas (Mukherjee), Adv. Ms. Sudeshna Das, Adv.
Hearing concluded on	: 20 th March, 2023
Judgement on	: 31 st March, 2023

Siddhartha Roy Chowdhury, J.:

1. This proceeding under Section 482 of the Code of Criminal Procedure challenges the order dated 24th November, 2011 passed by learned Chief Judge, City Sessions Court in Criminal Revision No. 215 of 2011 affirming thereby the order passed by learned 16th Court of Metropolitan Magistrate on 20th July, 2011 in G.R. Case No. 2035 of 2009 by which learned Metropolitan Magistrate refused to

discharge the accused person by rejecting the application filed under Section 239 of the Code of Criminal Procedure on the ground that the impugned order was interlocutory in nature and thus not amenable to revision under Sub-Section 2 of Section 397.

2. Briefly stated, Smt. Renuka Panda filed an application under Section 156 (3) of the Code of Criminal Procedure before the learned Chief Metropolitan Magistrate, Calcutta contending, *inter alia*, that she is legally married to the accused no. 1 and their marriage was solemnized according to Hindu Rites on 18th September, 1972 and subsequently registered under the Hindu Marriage Act, 1956, on 10th January, 1975. After marriage the complainant stayed together with her husband at 12/2 Subol Chandra Lane, Kolkata-700009. The complainant was subjected to torture during her stay with her husband, who was only interested in money and for that used to inflict torture upon the complainant to make her fetch a sum of Rs. 50,000/- to start his office as Astrologer and ultimately she was driven out with her daughter in the year 1976. In the meantime, her husband picked up relationship with Smt. Gopa Sastri and they decided to marry each other ignoring the protest of the complainant. Her husband instituted a suit for divorce being MAT Suit No. 134 of 1978. The complainant Renuka Panda entered into appearance. The complainant being a lady ignorant about the Court proceeding, relied upon her advocate and on 13th August, 1985 the said Matrimonial Suit was dismissed for non-prosecution. After the dismissal of the suit said advocate of the complainant obtained her signature on few

papers in order to recover arrears of the alimony pendent lite. In the meantime, accused no. 1, her husband married accused no. 2 illegally and in gross violation of law. Her husband initiated several legal proceedings in order to harass her. The daughter of the complainant took out a petition seeking maintenance and for the first time in the said proceeding the accused Ramkrishna Panda @ Ramkrishna Sastri disclosed that the marriage between the complainant and the accused no. 1 Ramkrishna was dissolved by decree of divorce on mutual consent on 25th March, 1986 in Matrimonial Suit No. 140 of 1985 under Section 28 of the Special Marriage Act by the learned 10th Judge, City Civil Court, Calcutta. On inquiry the complainant came to know that after dismissal of the suit for non-prosecution on 13th August, 1985 her husband obtained a forged marriage registration certificate under the Special Marriage Act and, thereafter, filed an application under Section 28 of the Special Marriage Act.

3. The petition of complaint was forwarded to the Jurisdictional Police Station by learned Metropolitan Magistrate and Muchi Para Police Station Case No. 190 dated 16th August, 2009 was registered under Section 498A /494/465/467/468/471/506 II of the I.P.C. Police after investigation submitted charge sheet. Learned Chief Metropolitan Magistrate was pleased to take cognizance of the offence and was pleased to transfer the case to the Court of learned 16th Metropolitan Magistrate for disposal. On 26th July, 2010, the petitioner filed an application under Section 239 of the Code of

Criminal Procedure Code before the learned Magistrate seeking discharge from the criminal proceeding. Learned Trial Court was pleased to reject the application on the ground that at the stage of framing of charge learned Magistrate cannot take into consideration any document supplied by the accused person. The said order was challenged before the learned Chief Judge, City Sessions Court and it was dismissed in the light of Sub-Section 2 of Section 397 of the Code of Criminal Procedure Code.

4. Mr. Sourav Chatterjee, learned Counsel for the petitioner submits that from the attending facts of the case it is admitted that the petitioner is married to Ramkrishna Panda @ Ramkrishna Sastri. The marriage took place after the marital knot between Ramkrishna Panda and Renuka Panda was dissolved by a decree of divorce. If the allegation of forgery is assumed to be correct, then also the petitioner cannot be held responsible for any offence as allegedly committed by her husband. According to Mr. Chatterjee, learned Chief Judge committed grave error in dismissing the revisional application, treating the order, rejecting the petition under Section 239 of the Cr.P.C. as interlocutory order. Since the order affects the right and interest of the accused person, such order cannot be considered to be an interlocutory, at best it can be considered as intermediate order which is amenable to revision. It is further contended by Mr. Chatterjee that by no stretch of imagination on the face of the complaint it can be said that during subsistence of marriage between the opposite party no. 2 and Ramkrishna, the petitioner was one of

the members of the said family or for that purpose relative of Ramkrishna. Therefore, he cannot be made culpable for allegedly committing offence under Section 498A of the I.P.C. Prosecution against the petitioner under Section 494 of the I.P.C. is not maintainable in the eye of law and if any offence is committed by her husband within the meaning of the Penal laws he is to face the consequences and for that petitioner should not be saddled with any criminal liability.

5. Refuting such contention Mr. Swapan Mallick, learned Counsel for the opposite party no. 2 submits that when charge sheet has been submitted by the police, after investigation it is to be presumed that police collected evidence, sufficient to send the petitioner for trial as an accused person. The Court, therefore, at this stage, may impose self restraint from invoking the provision of Section 482 of the Cr.P.C. to interfere with the order impugned. The accused persons including the petitioner should join the trial. To buttress his points Mr. Mallick places reliance upon the judgement of Hon'ble Apex Court pronounced in the case of ***Indu Jain vs. State of Madhya Pradesh & Ors.*** reported in (2009) 3 SCC (Cri) 996; ***Soma Chakraborty vs. State (through CBI)*** reported in (2007) 2 SCC (Cri) 514; ***Bhawna Bai vs. Ghanshyam & Ors.*** reported in (2020) 1 SCC (Cri) 581; ***Mustaq Ahmed vs. Md. Habibur Rahaman Faizi & Ors.*** reported in (1996) CCRLR (SC) 199.
6. Learned Counsel for the State Mr. Swapan Banerjee produced the case diary duly certified. I have perused the statement of witness

recorded under Section 161 of the Cr.P.C. by police in course of investigation but there is no evidence as to the role played by the petitioner in preparing the forged documents, and needless to say that the forged documents were ever used as genuine by the petitioner. The victim opposite party Renuka Panda in her statement did not make any allegation against the petitioner indicating any act of criminal intimidation within the meaning of Section 503 of the I.P.C., punishable under Section 506 of the I.P.C. Section 494 of the I.P.C. speaks of an offence that could be committed by either of the spouse in a marriage who having a husband or wife living marries again. The section itself indicates that either of the spouse of a marriage can be made culpable for committing second marriage. Therefore, by no stretch of imagination the petitioner can be said to have committed offence within the meaning of Section 494 of the I.P.C.

7. Section 498A of the I.P.C. enunciates:-

“Section 498A in The Indian Penal Code

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

Section 498A of the I.P.C. is directed for punishing the husband and his relatives for harassment or for inflicting torture upon the wife with certain object.

8. The opposite party no. 2 admittedly was not in the company of her husband since 1976 when she was allegedly driven out of her matrimonial home by her husband and the petitioner got married to Ramkrishna Panda @ Ramkrishna Sastri subsequent to the dissolution of the marriage between Ramkrishna Panda and Renuka Panda. Therefore, petitioner cannot be held even prima facie culpable for committing offence within the meaning of Section 498A of the I.P.C.
9. There is no averment or evidence, even prima facie to indicate that petitioner prepared a false document like marriage certificate, which was allegedly used as genuine in the matrimonial proceeding. If the allegation of the opposite party no. 2 even is assumed to be correct, there is no reason to hold that the document was used by the petitioner. If anyone used a forged document as genuine one in the divorce proceeding, it was the husband of the petitioner and not the petitioner herself. Being wife she cannot be held vicariously liable and vicarious liability is something alien to the Penal law. Section 506 of the Indian Penal Code provides punishment for criminal intimidation

as defined under Section 503 of the Penal Code. As I have already pointed out to bring home the offence prima facie within the meaning of Section 503 of the Penal Code there has to have some statement to the effect that the petitioner had done an act with the intention of causing alarm to the opposite party no. 2 or there was sufficient reason to cause that person to do an act which he is not legally bound to do or to omit to do an act which that person is entitled to do, which is glaringly missing in this case. Therefore, prima facie case under Section 506 of the I.P.C. cannot be said to have been established against the petitioner. The content of F.I.R. does not constitute any offence against the petitioner. In a celebrated judgement **STATE OF HARYANA VS. BHAJAN LAL** reported in **AIR 1992 SC 604**, Hon'ble Apex Court held:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police

officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act, concerned providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

10. Much has been said about the application of Section 227 of the Cr.P.C. by Mr. Swapan Mallick, learned Counsel for the opposite party. I have perused all the decisions relied upon by Mr. Mallick as to the role to be played by learned Trial Court at the time of considering the petition of discharge under Section 227 of Cr.P.C. or at the time of consideration of charge. In this regard, we can profitably rely upon the judgement pronounced in the case of **SAJJAN KUMAR VS. CBI** reported in **AIR 2011 SCW 3730**, where

Hon'ble Apex Court had an occasion to consider the scope of Sections 227 and 228 Cr.P.C. The principles which emerged therefrom have been taken note of in para 21 as under:-

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

11. I am also inclined to rely upon the judgement of Hon’ble Apex Court, pronounced in the case of **GHULAM HASSAN BEIGH VS. MOHAMMAD MAQBOOL MAGREY** reported in **AIR 2022 SC 5454**, wherein Hon’ble Apex Court held:-

“27. Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the Court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has

committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the Court by the prosecution in the shape of final report in terms of [Section 173](#) of CrPC, the Court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution. (See : [Bhawna Bai v. Ghanshyam](#), (2020) 2 SCC 217)."

12. It is pertinent to mention here that the petitioner opposite party no. 2 initiated the criminal proceeding sometime in the year 2009 while the marital knot between the opposite party no. 2 and accused no. 1 got dissolved in the year 1985. Though Mr. Mallick vehemently argued that such decree of divorce was obtained by fraud, but such plea of the opposite party no. 2 failed to inspire confidence in the learned Trial Court. It was not accepted. Even if such allegation was accepted by learned Trial Court, then also the petitioner could not have been fastened with criminal liability on that score.
13. Under such circumstances, I am of the view that even upon bare reading of the petition of complaint filed before the learned Chief Metropolitan Magistrate, I do not find even prima facie, any ingredient of offence to have been made out against the petitioner, rather this proceeding against the petitioner Smt. Gopa Sastri, appears to have been attended with malafide. Therefore, I am inclined to invoke the provision of Section 482 of the Code of Criminal Procedure to secure the ends of justice. Consequently, the criminal revision is allowed. Proceeding being G.R. Case No. 2035 of 2009 pending before the learned Trial Court stands quashed qua the petitioner. Application, if any, stands disposed of.

14. Before parting with the case, I would like to dilate upon another important aspect touching liberty of a citizen. Hon'ble Apex Court way back in **HUSSAINARA KHATOON VS. HOME SECRETARY, STATE OF BIHAR** reported in **(1980) 1 SCC 81** held:-

"No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair and just and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty as enshrined in Article 21."

15. Section 239 of the Cr.P.C. envisages:-

"Section 239 in The Code Of Criminal Procedure, 1973

239. When accused shall be discharged. If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

16. Section 240 of the Cr.P.C. envisages:-

"Section 240 in The Code Of Criminal Procedure, 1973

240. Framing of charge.

(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

17. Reading of Section 239 and Section 240 of the Cr.P.C. conjointly would lead us to conclude that if there is no ground to presume that accused person has committed offence, he shall be discharged, else learned Magistrate shall frame charge, having found reason to presume that the accused person committed offence, for which he could be adequately punished by the learned Magistrate in the trial under Chapter XIX of the Cr.P.C.
18. Upon plain reading of both the sections it becomes clear that upon considering the police report and documents sent with it under Section 173 of the Code of Criminal Procedure and also upon considering the document of sterling quality brought before the learned Trial Court, if learned Trial Court considers the charge against the accused to be groundless, he shall discharge the accused and if upon considering the materials learned Trial Court finds sufficient ground for assuming that the accused has committed an offence triable under Chapter XIX of the Code of Criminal procedure shall frame charge in writing against the accused person. There is no reason as to why the same cannot be done on that very day. It would secure the right of the litigants to have expeditious trial. Of course there could be a situation when learned Magistrate may find it difficult to hold the trial under Chapter XIX of the Cr.P.C. If it is found that offence disclosed is triable under Chapter XX of the Code, Magistrate can take recourse to the provision as laid down under

Section 251 of Cr.P.C. and in the same sitting. In fact Section 251 of the Code of Criminal Procedure mandates that when the accused person appears or is brought before the Magistrate, learned Magistrate shall explain the substance of the accusation to the accused person and ask him if he pleads guilty or has any defence to make. Statute does not provide any room for cooling off period or sabbatical for that purpose. All that is required is the appearance or production of the accused before the Magistrate with proper representation through advocate.

19. In this case learned Trial Court was pleased to reject the petition under Section 239 of Cr.P.C. on 20th July, 2011 but without framing the charge, fixed 23rd September, 2011 for consideration of charge. This kind of order is unwarranted and it causes impediment in expeditious trial and defeats the right of the litigants to have speedy justice. Natural corollary to the rejection of prayer for discharge would be commencement of trial with the framing of charge. The provision of Section 239 Cr.P.C. and 240 of Cr.P.C. should be considered as two sides of same coin; whether after toss it is 'head' or 'tail', consequence shall have to follow, without any delay. Of course under Chapter XVII of the Code of Criminal Procedure, if learned Sessions Judge does not find any reason to invoke the provision of Section 227 of Cr.P.C., he shall have to take recourse to Section 228 of the Code of Criminal Procedure, where learned Sessions Judge shall have two avenues to tread upon; either learned Judge shall have to frame charge under Sub-Section (1) (b) of Section 228 of Cr.P.C. or to invoke the provision

as laid down under Sub-Section (1) (a) of Section 228 of Code of Criminal Procedure, depending upon the facts of the case. Learned Trial Court shall have to remain alive to this solemn duty while exercising sovereign power and no trial Court thus can or should afford the luxury of fixing two different dates as it has been done in this case.

20. Let a copy of this judgement be sent down to the learned Trial Court for information and necessary compliance. Learned Registrar General is directed to circulate the judgement among the Judges holding criminal trials.
21. Urgent certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)