

03.01.2023
S/L No.38
KS

C.R.R. 172 of 2021
Nasib Ali & Ors.
-Vs.-
State of West Bengal & Anr.

Mr. Kallol Kumar Basu
Md. Jannut Ul Firdous
Ms. Tithi Majumder
.....For the Petitioners
Mr. Saswata Gopal Mukherjee, Ld. P.P.
Mr. Imran Ali
Mrs. Debjani Sahu
.....For the State
Mr. Usof Ali Dewan
Mr. Sourav Mukherjee
Mr. Asif Dewan
Mr. Arup Sarkar
.....For the O.P. No.2

Report submitted by the State be kept with the record.

Mr. Basu, learned advocate appearing for the petitioners have challenged the proceedings arising out of Pukhuria Police Station Case No.176 of 2019 dated 23.05.2019 under Sections 498A/ 308/ 506 of the Indian Penal Code and Sections 3/ 4 of the Dowry Prohibition Act. The Investigating Agency on conclusion of investigation submitted charge-sheet under Sections 498A/ 506 and 34 of the Indian Penal Code read with Section 4 of the Dowry Prohibition Act.

The prime contention advanced before this Court by the learned advocate appearing for the petitioners is that the first case was initiated by the complainant/wife being English Bazar Police Station Case No.995 of 2018 dated 19.09.2018, the said case was against Guljar Hossain and his relations. The said case was also under Sections 498A/ 323/ 506 and 34 of the Indian Penal Code. The emphasis of the Learned advocate appearing for the petitioners is that the

same lady in respect of another person claiming to be his wife instituted a case under Section 498A and other allied sections on 19.09.2018 and within eight months lodged another case against Nasib Ali (and his relations). According to the learned advocate, there are no documents to show that the lady was divorced in the meantime within these eight months and has taken advantage of two different police stations investigating the case.

Mrs. Sahu, learned advocate appearing for the State contended that the lady could not be traced as is revealed from the report and no Talaknama, as such, could be obtained by the Investigating Agency.

Mr. Dewan, learned advocate appearing for the private opposite party contended that the complainant gave Talak on February, 2019 and marriage was solemnized with Nasib Ali on April, 2019 and the present case was instituted on 23rd May, 2019. According to the learned advocate, although things have moved fast, but, then for all practical purposes there cannot be any presumption that it was impossible for the Talak and the subsequent marriage to take place.

I have considered the submissions advanced by the learned advocate appearing for the petitioners, State and the learned advocate appearing for the private opposite party. The Talaknama should have been collected by the Investigating Agency. However, the prosecution is not barred also from producing the same at a later point of time, if circumstances so demand. The thrust which the petitioners were exerting before this Court relating to the close proximity of time between which the first case and the second case was instituted and the issues relating to divorce/Talak and the subsequent marriage are wholly question of facts which summarily can not be opined by this Court on the basis of documents or exchange of affidavits. As such, this Court is not inclined to interfere with the prayers so advanced by the petitioners.

Petitioners would be at liberty to canvass the points and/or challenge the documents relied upon by the complainant or to rebut the contentions in respect of the first marriage and the second marriage of the complainant at the appropriate stage.

With the aforesaid observations, C.R.R. 172 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)