

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 191 of 2019

Jahanara Sk.

Vs

The State of West Bengal & Ors.

For the Petitioner : Mr. Debashis Banerjee,
Mr. Kartik Kumar Ray,
Mr. Rakesh Jana.

For the State : Mr. Joydeep Roy,
Ms. Sujata Das.

For the Opposite Party : Mr. Santanu Deb Roy,
Mr. Dipankar Guha.

Heard on : 06.02.2023

Judgment on : 28.02.2023

Shampa Dutt (Paul), J.:

The present revision has been preferred praying for setting aside of the order dated 06.03.2017 passed by the learned Judicial Magistrate, 3rd Court, Hooghly in G.R. No. 157 of 2016 arising out of Chinsurah Police Station Case No. 47/16 dated 21.01.2016 framing charge under Section 498A of the IPC only against the accused persons.

The petitioner's case is that the petitioner is the legally wedded wife of the opposite party no. 2 herein and their marriage was solemnised on 07.09.2007 as per Islamic customs and the marriage was also registered.

That as per the demands of the opposite party no. 2 and his family members, the father of the petitioner left no stone unturned and gifted substantial gold jewellery and furniture, which are described herein below, and after all ceremonies were over, the petitioner went to reside at her matrimonial home on 24.11.2007.

List of ornaments gifted by the father of Jahanara at the time of marriage:-

- | | | |
|----------------------------------|---|--------|
| (a) Golden Neckless with Dul | : | 2 Bhor |
| (b) Golden Neckless with ear set | : | 3 Bhor |
| (c) Golden Chick | : | 1 Bhor |

- | | | |
|----------------------------------|---|--------|
| (d) Golden Chur (Hand) 2 Pc. | : | 3 Bhor |
| (e) Golden Bala (Hand) 2 Pc. | : | 2 Bhor |
| (f) Golden Ring 4 pc. | : | 1 Bhor |
| (g) Golden Neckless (from Uncle) | : | 1 Bhor |

List of Stridhan Articles:-

- (1) Wooden cot made of Segun wood with Galicha,
- (2) Dressing Table,
- (3) Dining Table with 6 pc. Chair,
- (4) L.G. Fridge (double door),
- (5) Washing machine,
- (6) Pital kolshi 1 pc.,
- (7) Kanshar Thala 5 pc.,
- (8) Pitol Bati 2 pc.,
- (9) Kansar Glass 5 pc.,
- (10) Dinner Set.
- (11) Benarasi Saree, Orange & Maroon colour,
- (12) VIP Suit Case with Wheel 1 pc.,
- (13) Ordinary Saree & other Churidars.

On 16.01.2008, the petitioner was asked to handover all her gold jewellery by her husband and her mother-in-law on the pretext of keeping the same in his bank locker and the petitioner out of trust on

her husband handed over all her gold jewellery received by her at the time of her marriage to her mother-in-law.

After a few days of the marriage, the petitioner came to know that her husband was having an illicit affair with another woman and on protesting to such affair of her husband, the petitioner was threatened by her husband and in-laws and she was asked to remain silent.

The petitioner was thereafter asked by her husband and in-laws to bring an amount of Rs. 3,00,000/- (Rupees three lakhs) from her father. The father of the petitioner was called to the matrimonial house of the petitioner on 06.06.2008 when the husband and the in-laws of the petitioner openly demanded the said amount of Rs. 3,00,000/- (Rupees three lakhs) and when the father of the petitioner expressed his inability to meet such demand, the petitioner was driven out of her matrimonial home without allowing her to take anything with her.

The petitioner since then is residing at her parental house at Raghunathgunj Darbeshpara, P.O. & P.S.- Raghunathgunj, District- Murshidabad, Pin- 742225.

During course of the proceeding, under Section 125 Cr.P.C., the petitioner came to know that her husband has married another lady.

The present case was initiated on an application under Section 156(3) of the Cr.P.C.

Mr. Debashis Banerjee learned counsel for the petitioner has submitted that the investigating authority thus investigated into complaint of the Petitioner in a lackasidical manner and submitted Charge Sheet being No. 217/16 dated 16.06.2016 as against the Opposite Party Nos. 2 to 4 herein under Section 498A/406 of the Indian Penal Code, however no jewellery or other articles which were kept under forceful possession by the Opposite Party Nos. 2 to 4 herein could be recovered by the Police.

The Learned Judicial Magistrate was pleased to frame charge under Section 498A of the Indian Penal Code as against the Opposite Party Nos. 2 to 4 and completely ignored the commission of the offence punishable under Section 406 by the Opposite Party Nos. 2 to 4 as was prima facie established during investigation by the Police as reflected in the Charge Sheet as aforesaid.

That no reason whatsoever was provided by the Learned Court for not framing of charge against the Opposite Party Nos. 2 to 4 under Section 406 of the Indian Penal Code.

Hence the revision.

That the Learned Judge of the Trial Court failed to appreciate that no jewellery or other articles which were kept under forceful possession by the Opposite Party Nos. 2 to 4 herein was recovered by the Police which are still lying under the illegal possession of the Opposite Party Nos. 2 to 4 and as such charge under Section 406 of the Indian Penal Code ought to have been framed against the Opposite Party Nos. 2 to 4.

That the investigating agency did not include primary and key witnesses of the case in the charge sheet which establishes that the investigating agency is absolutely biased towards the accuseds.

That while passing the order impugned, the Learned Judicial Magistrate completely ignored the commission of the offence punishable under Section 406 by the Opposite Party Nos. 2 to 4 as was prima facie established during investigation by the Police as reflected in the Charge Sheet as aforesaid.

That the impugned order dated 06.03.2017 as passed by the Learned Judicial Magistrate, 3rd court Hooghly in G.R. No.157/16 arising out of Chinsurah Police Station Case No. 47/16 is thus bad in law as well in fact and is thus liable to be set aside.

Mr. Santanu Deb Roy, learned counsel for the opposite party has submitted that the investigation is in accordance with law and so

also the charge has been framed duly on the basis of the materials on record and the case diary.

The revision is thus liable to be dismissed.

Mr. Joydeep Roy, the learned counsel for the State has placed the case diary.

Heard the learned counsels for both sides and the State. Perused the materials on record and the case diary. Considered.

Order dated 19.02.2016 of the Sessions Judge, Hooghly in Cr. Misc. Case No. 349/2016 includes a statement that **in 2009, the petitioner herein had filed another case against the opposite parties under Section 498A/307 IPC.**

It is the case of the petitioner that she was **driven out from her matrimonial home after a few days of her marriage.**

The present case has been registered on 21.01.2016. No allegation was made by the petitioner under section 406 of the Indian Penal Code in the complaint of the year 2009.

Section 406 IPC thus appears to be an afterthought, after almost 8 years.

There is also no materials in the case diary to make out a prima facie case under section 406 of the Indian penal code against the accused persons.

Thus in view of the observations above, the order of the learned Magistrate dated 06.03.2017 is in accordance with law and needs no interference.

CRR 191 of 2019 is dismissed.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)