

**IN THE HIGH COURT AT CALCUTTA**

**(Criminal Revisional Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 349 of 2020**

**Jaya Banerjee @ Jaya Banerjee (nee Mojumder) & Anr.**

**Vs**

**The State of West Bengal & Anr.**

**For the Petitioners** : Mr. Sourav Chatterjee,  
Mr. Aniruddha Bhattacharya.

**For the State** : Md. Anwar Hossain,  
Ms. Sreyashee Biswas.

**For the Opposite Party No. 2** : Dead (not represented).

Heard on : 21.04.2023

Judgment on : 15.05.2023

**Shampa Dutt (Paul), J.:**

1. The present revision has been preferred praying for quashing of proceedings being Case No. C – 4292 of 2019 pending before the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas under Sections 352/325/379/506/34 of the Indian Penal Code and all orders passed therein including orders dated 13.12.2019 and 15.01.2020 passed by the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas in connection with the aforesaid case.
2. The petitioner's case is that the petitioners are sister and brother by relation. The petitioner no. 1 is the legally married wife of the opposite party no. 2 herein.
3. The petitioner no.1 got married to the opposite party no. 2 on 20.10.2018 as per the provisions of the Special Marriage Act and the said marriage was duly registered.
4. The opposite party no. 2 and his family members then started inflicting physical torture upon the petitioner no.1 regularly.
5. On 24.10.2019, the petitioner no.1 was mercilessly beaten up by the opposite party no.2 and for which the petitioner no. 1 had to visit the doctor for receiving medical treatment.
6. On 06.11.2019, while the petitioner no.1 was still residing at her matrimonial home at Lake Town and leading her conjugal life, she was shocked to receive a copy of the plaint of the Divorce suit along with the

summons being served upon her by post, filed by the opposite party no. 2 before the Court of the Learned District Judge, Barasat, North 24 Parganas under Section 27(1) the Special Marriage Act, which was numbered as Matrimonial Suit No. 2260 of 2019.

7. The opposite party No. 2 and his family members appeared completely indifferent and rather started pressuring the petitioner No.1 for giving her consent for divorce and also allured the petitioner No. 1 by promising her a staggering sum of money in return, which the petitioner No. 1 flatly refused, thereby earning the wrath of the opposite party No. 2 and his family members and they blatantly threatened to get her and the other family members implicated in false cases in future in the event she refused to fall in line. The petitioner No. 1 was constrained to lodge a complaint to such effect with the Officer-in-charge, Lake Town Police Station on 07.11.2019.
8. That in terms of the said summons in connection with the said divorce proceeding being Mat Suit No. 2260 of 2019, the petitioner No.1 duly entered appearance before the Court of the Learned District Judge, Barasat, North 24 Parganas on 15.01.2020 and the matter has been referred to mediation.
9. The petitioner No.1 was constrained to file an application under Section 12 read with Sections 18/19/20 of the Protection of Women from Domestic Violence Act, 2005 against the opposite party no. 2 herein and his brother namely one Avilash Majumder.

10. In connection with the said C. Case No. 3387 of 2019, an interim application under Section 23(2) of the Protection of Women from Domestic Violence Act, 2005 was also filed by the petitioner no.1 claiming similar reliefs.
11. On 16.12.2019 , the Domestic Incident Report dated 10.12.2019, was filed before the Court of the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas, by one Sumita Dutta (Laha), Protection Officer clearly spelling out regular incidents of torture inflicted upon the petitioner No.1 in her matrimonial home.
12. On 07.12.2019, the opposite party No. 2 and his brother Avilash Majumder came to know about the institution of the proceeding under the protection of Women from Domestic Violence Act, 2005 against them by the petitioner No.1, and immediately they became infuriated and started to beat up the petitioner No.1 mercilessly and destroyed many of her valuable documents and on 08.12.2019, they drove her out of her matrimonial home. The petitioner No. 1 then lodged a complaint with Lake Town Police Station, being Lake Town Police Station Case No. 231 of 2019 dated 08.12.2019 under Sections 498A/325/406 of the Indian Penal Code against the opposite party no.2 and his brother Avilash Majumder.
13. The petitioners state that in gross abuse of the process of the Court and as counterblast of the First Information Report lodged by the petitioner No. 1 against the opposite party No. 2 and his brother, the opposite

party No. 2 filed the purported petition of complaint before the Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas against the petitioners under Sections 352/325/379/506/34 of the Indian Penal Code and pursuant to the direction of the Learned Magistrate, such case was directed to be registered as a Complaint Case, which was numbered as Case No. C-4292 of 2019.

14. Thereafter vide an order dated 13.12.2019, the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas mechanically and in complete non application of judicial mind was inter alia pleased to take cognizance of the offences.
15. **Mr. Sourav Chatterjee, learned counsel for the petitioners** has submitted that the law is well settled that in a case instituted upon a complaint involving offences punishable under the Indian Penal Code, the examination of the complainant under Section 200 of the Code of Criminal Procedure by way of evidence on affidavit is completely illegal and perverse, however, the Learned Magistrate permitted the opposite party no. 2 /Complainant to be examined under Section 200 of the Code of Criminal Procedure on affidavit and on the score itself, order issuing process against the petitioners are illegal and are liable to be set aside.
16. The address of the petitioners as mentioned in the petition of complaint itself, which also happens to be present residential address, are situated outside the territorial jurisdiction of the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas. In view of the

same, the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas while issuing process against the petitioners, vide an order dated 15.01.2020, ought to have resorted to the mandatory provisions of Section 202 of the Code of Criminal Procedure before summoning the petitioners. Such mandatory exercise was not done by the Learned Magistrate and on that score also the impugned proceeding is liable to be quashed.

17. The Learned Magistrate committed grave illegality in not postponing the issuance of process and not directing an enquiry under Section 202 of the Code of Criminal Procedure. Such illegality strikes at the very root of the initiation of the impugned proceedings and as such the same is liable to be quashed.
18. The petition of complaint in the instant case was lodged as late as on 13.12.2019 (i.e. after a delay of 5 days), without there being any explanation of such delay thereby clearly establishing that the instant complaint was nothing but an afterthought thereby clearly exposing its malafide.
19. That the instant proceeding has been degenerated into an instrument of harassment and oppression and in the interests of justice the same is liable to be quashed as no case under Sections 352/325/379/506/34 of the Indian Penal Code has been made out against the petitioners herein.
20. The petitioners submit that the continuation of the impugned proceedings shall amount to an abuse of the process of the court and it

is expedient in the interest of justice that the impugned proceedings be quashed and/or set aside in order to prevent the abuse of the process of court or otherwise to secure the ends of justice.

21. **The complainant/opposite party no. 2 has expired on 07.05.2021.**
22. **A fresh service was effected after the death of the opposite party no. 2, but there has been no representation by any legal heirs.**
23. From the materials on record it is apparent that **there was serious matrimonial discordant between the parties. The opposite party no. 2 (now deceased) had also initiated a suit for divorce.**
24. The present case is under Sections 352/325/37/506/34 of the Indian Penal Code.
25. **Section 352 of the Indian Penal Code, lays down:-**

***“352.Punishment for assault or criminal force otherwise than on grave provocation.-Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.***

***Ingredients of offence.- The essential ingredients of the offence under Section 352 are as follows:-***

- (1) Accused made a gesture or preparation to use criminal force.*
- (2) He knew that it was likely that such gesture or preparation to use criminal force would cause apprehension that criminal force would be used by him against the victim.*
- (3) There was no grave or sudden provocation from the side of the victim.”*

26. **Section 325 of the Indian Penal Code, lays down:-**

**“325. Punishment for voluntarily causing grievous hurt.**—Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Ingredients of offence.**— The essential ingredients of the offence under Section 325 are as follows:-

- (1) Accused voluntarily caused hurt;
- (2) Hurt was grievous within the meaning of Section 320, IPC.”

**27. Section 379 of the Indian Penal Code, lays down:-**

**“379. Punishment for theft.**—Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Ingredients of offence.**— The essential ingredients of the offence under Section 379 are as follows:-

- (1) The accused removed the movable property;
- (2) He removed it out of the possession of another person without his consent;
- (3) He did so with a dishonest intention.”

**28. Section 506 of the Indian Penal Code, lays down:-**

**“506. Punishment for criminal intimidation.**—Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

**If threat be to cause death or grievous hurt, etc.**—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

***Ingredients of offence.-*** The essential ingredients of the offence under Section 506 are as follows:-

- (1) The accused threatened someone with injury to his person, reputation or property, or to the person, reputation or property of another in whom the former was interested;*
- (2) The accused did so with intent to cause alarm to the victim of offence;*
- (3) The accused did so to cause the victim to perform any act which he was not legally bound to do.”*

29. From the petition of complaint it appears that there are three witnesses to the complaint filed. The learned Magistrate vide his order dated 15.01.2020 while issuing process considered only the written affidavit in chief filed by the complainant. No witnesses were examined though cited. Both parties have filed cases against each other on the same day. One of the allegation is of stealing rupees five lakhs from the complainant's drawer. The dispute is such, that efforts at mediation should have been made, but the death of the complainant/husband has put an end to all discord between the parties. The evidence considered by the learned Magistrate prior to issuance of summons also does not prima facie make out a case against the petitioner as alleged.
30. On careful perusal of the contents in the petition of complaint **in the present case**, the ingredients required to constitute the offences alleged are absent. There is no prima facie materials on record against the petitioners in respect of the offences alleged and as such the proceedings in being Case No. C – 4292 of 2019 pending before the Learned

Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas under Sections 352/325/379/506/34 of the Indian Penal Code and all orders passed therein including orders dated 13.12.2019 and 15.01.2020 passed by the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas, if allowed to continue shall be an abuse of the process of law and is thus liable to be quashed/set aside, in the interest of justice.

31. **CRR 349 of 2020 is allowed.**

32. The proceedings being Case No. C – 4292 of 2019 pending before the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas under Sections 352/325/379/506/34 of the Indian Penal Code and all orders passed therein including orders dated 13.12.2019 and 15.01.2020 passed by the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas, is hereby quashed.

33. No order as to costs.

34. All connected Applications stand disposed of.

35. Interim order if any stands vacated.

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

37. Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

**(Shampa Dutt (Paul), J.)**