

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.R. 568 of 2021

***Smt. Priti Mukherjee & Ors.
versus
State of West Bengal & Anr.***

For the Petitioners : Ms. Aiswarjya Gupta,
Ms. Priyanka Saha.

For the State : Mr. Madhusudan Sur,
Mr. Dipankar Paramanick.

Heard On : 03-02-2023 & 06-02-2023.

Judgement On : 06-02-2023.

Tirthankar Ghosh, J. :

The present revisional application has been preferred challenging the charge-sheet filed in connection with Andal Police Station Case No. 82 of 2020 dated 01.03.2020 under Sections 447/323/379/506 of the Indian Penal Code which is pending before learned Additional Chief Judicial Magistrate, Durgapur as also the order of cognizance and subsequent orders.

The genesis of the case was on the basis of application under Section 156(3) of the Code of Criminal Procedure which was filed before the learned Additional Chief Judicial Magistrate, Durgapur being M.P. Case No. 98 of 2020. The learned Magistrate on receipt of the same was pleased to direct the Officer-in-Charge, Andal Police Station to register a case, consequently the present case was initiated. The allegations made in the application under Section 156(3) of the Code of Criminal Procedure were to the effect that the complainant Subrata Mukherjee was married to Priti Mukherjee on or about 04.07.2009 and out of the said wedlock a girl child viz., Poulami Mukherjee was born on 29.11.2013. On 11.04.2013, the complainant's wife left her matrimonial home along with the child, taking away all her belongings including Streedhan articles and started staying at her parental home. Complainant on several occasions went to bring her back, but she refused to return. On 17.11.2019, the accused persons came in a Tata Sumo vehicle at the complainant's house, abused and threatened him thereby asking him to divorce his wife, in the alternative they would implicate the complainant in false criminal case. The accused persons smashed the household articles and being afraid the complainant started shouting when local people assembled at his house and the accused persons left the house with a message that in case the complainant do not pay, then he would be murdered. At the time of

leaving, the accused persons took away his wrist watch and also threatened his mother.

The investigating agency on conclusion of investigation submitted charge-sheet before the jurisdictional court under Sections 447/341/323/506/34 of the Indian Penal Code and the learned Additional Chief Judicial Magistrate, Durgapur was pleased to take cognizance of the offences.

Ms. Gupta, learned advocate appearing for the petitioners submitted that the present proceedings are attended with malafide and is counterblast to the proceedings being Misc. Case No. 13/2017 (alimony pendente lite) and Section 12 of the Protection of Women from Domestic Violence Act, 2005 wherein orders have been passed awarding maintenance with huge amount of dues pending. The complainant/opposite party no.2 in order to avoid such payments, is using the process of criminal law to harass the petitioner no.1 and her relations. Learned advocate draws the attention of the Court to the order dated 03.12.2018 passed in Misc. Case No. 13/2017 wherein there was a direction to pay alimony pendente lite to the tune of Rs.8000/- to the wife and another sum of Rs.5000/- towards the child. Attention of the Court was drawn to the judgement delivered in Misc. Case No. 115/2015 wherein on 17.10.2019, the learned Judicial Magistrate, 2nd Court, Suri, Birbhum was pleased to award maintenance of Rs.15000/- (Rs.10,000/-

to the wife and Rs.5000/- to the child), an amount of Rs.4000/- towards cost of suitable accommodation, Rs.5,00,000/- as compensation for treatment of the daughter along with the orders relating to protection and return of Streedhan articles. It has been submitted that earlier also similar case was initiated being Andal Police Station Case No. 240/2018 dated 10.12.2018 wherein the police authorities on conclusion of investigation, submitted charge-sheet for alleged offences under Sections 341/323/506/34 of the Indian Penal Code. Attention of the Court was also drawn to the contents of the said FIR which was registered on the basis of an application under Section 156(3) of the Code of Criminal Procedure.

Mr. Sur, learned advocate appearing for the State has drawn the attention of the Court to the case diary along with the statement of five relevant witnesses and the injury report.

Before proceeding with the submissions advanced by the learned advocate appearing for the petitioners as well as that of the State, certain settled principles of law as laid down by the Hon'ble Supreme Court are required to be taken into consideration.

In ***Rajiv Thapar v. Madan Lal Kapoor*** reported in **(2013) 3 SCC 330**, the Hon'ble Supreme Court has laid down the circumstances under which documents of unimpeachable character or sterling quality can be relied upon to interfere in a proceeding or for the purpose of exercising

powers under Section 482 of the Code of Criminal Procedure. Paragraphs 29 and 30 are relevant for the purpose of the present case which are set out as follows :

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations

contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.”

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

***30.1.**Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?*

***30.2.**Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the*

factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3.*Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?*

30.4.*Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?*

30.5.*If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”*

The documents which have been enclosed along with the present revisional application include the judgement delivered by the learned District Judge, Birbhum in Misc. Case No. 13/2017, the judgement delivered by the learned Judicial Magistrate, 2nd Court, Suri, Birbhum in Misc. Case No. 115/2015 under the provisions of the Protection of

Women from Domestic Violence Act, 2005, the earlier case which was registered at the instance of the same complainant i.e. Subrata Mukherjee being Andal Police Station Case No. 240 of 2018 dated 10.12.2018 under Sections 323/324/379/427/506/120B/34 of the Indian Penal Code and the charge-sheet filed therein under Sections 341/323/506/34 of the Indian Penal Code including the certified copies of the orders relating to present case where charge-sheet has been submitted.

The peculiarity of the present case is that the averments made in the application under Section 156(3) of the Code of Criminal Procedure in M.P. Case No. 777 of 2018 which was the genesis of Andal Police Station Case No. 240 of 2018 dated 10.12.2018 are similar and identical. Paragraphs 3, 4 and 5 of the said application under Section 156(3) of the Code of Criminal Procedure are set out as follows :

“3) That the Complainant went several time to bring her back but she flatly refused to lead conjugal life with him and always tells to file Divorce on mutual consent but the Complainant never agrees with her and lastly on 18/11/2018 at about 09:00 A.M. suddenly all the accused person came to the Complainant’s house at Ukhra, Dist – Paschim Bardhaman with a TATA Sumo without bearing No. and seriously assaulted the Complainant by fist and blows in presence of his family members and all the accused persons used

slang languages towards the Complainant's family members and says "TUI AMAR DER MEYE K DIVORCE DIYA DE. TA NA HOLA TOK MITTHA CASE E JORABO" and also threatened to murder the Complainant and his other family members and during the time of assault due to hue and cry some neighbours reached at the spot and the accused persons went away by giving threat to the complainant and all the accused person also broken some household articles of the complainant.

4) That during said time accused no 4 snatched away One Wrist Watch and one golden chain of the complainant.

5) That the complainant went to the nearest police station and informed the officer-in-charge regarding the theft of valuable articles but without any result."

In ***Usha Chakraborty & Anr. Vs. State of West Bengal & Anr.*** reported in **2023 SCC OnLine SC 90**, the Hon'ble Supreme Court was pleased to hold that concealment in respect of earlier cases which relate to civil dispute do give a cause of action to the High Court for invoking its jurisdiction under Section 482 of the Code of Criminal Procedure. Paragraph 15 of the said judgment is set out as follows :

"15. *The materials on record pertaining to the said pleadings instituted in the Civil Suit, produced in this proceeding would reveal*

that the respondent was in fact ousted from the membership of the trust. In the counter affidavit filed in this proceeding, the respondent has virtually admitted the pendency of the suit filed against his removal from the post of Secretary and the trusteeship and its pendency. The factum of passing of adverse orders in the interlocutory applications in the said Civil Suit as also the prima facie finding and conclusion arrived at by the Civil Court that the respondent stands removed from the post of Secretary and also from the trusteeship are also not disputed therein. Then, the question is why would the respondent conceal those relevant aspects? The indisputable and undisputed facts (admitted in the counter-affidavit by the respondent) would reveal the existence of the civil dispute on removal of the respondent from the post of Secretary of the school as also from the trusteeship. Obviously, it can only be taken that since the removal from the office of the Secretary and the trusteeship was the causative incident, he concealed the pendency of the civil suit to cover up the civil nature of the dispute.”

It is a fact that the documents which have been enclosed along with the revisional application are of unimpeachable character and of sterling quality. Relying upon the same, it can be concluded that the complainant and the petitioner no.1 herein are at loggerheads because of

matrimonial discord. The complainant in his application under Section 156(3) of the Code of Criminal Procedure suppressed regarding the civil suits, the case under the Protection of Women from Domestic Violence Act and the earlier case of Andal Police Station which is pending. The allegations in the FIR relating to Andal Police Station Case No. 240 of 2018 dated 10.12.2018 and the present FIR and charge-sheet relating to Andal Police Station Case No. 82 of 2020 dated 01.03.2020 are identical and similar.

Having considered the contentions advanced by the petitioners, I am of the view that the present case is a counterblast to the proceedings wherein directions for alimony pendente lite as also for payment were passed by the learned Magistrate in the proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005.

Paragraph 8 of the judgement of the Hon'ble Apex Court in ***Anupriya Pal Vs. State of Uttar Pradesh*** reported in **(2019) 14 SCC 643** is relevant for the purpose of the present case which is set out as follows:

“8. This is a classic case of taking revenge by the husband against the wife since he was aggrieved by the action of the wife moving an application seeking maintenance. Absolutely no allegation which could fit in for the offence under Section 420 IPC is found in the first information report lodged by Respondent 2. Since the first

information of Respondent 2 appears to be a counterblast to the maintenance proceeding initiated by the wife against her husband, these proceedings are liable to be quashed. Accordingly, this petition is allowed and the order dated 31-1-2017 [Anupriya Pal v. State of U.P., 2017 SCC OnLine All 2831] passed by the High Court is set aside. The proceedings in Complaint Case No. 6714 of 2011 pending before the Additional CJM Court, Ghaziabad are hereby quashed.”

Having regard to the nature of the materials collected by the investigating agency which is only supported by the complainant and his mother and the rest of the witnesses happen to be hearsay witnesses along with the facts that the injury report which has been relied upon do not spell out any external injury or even any wound or bruise which were visible to the doctor who checked the complainant. The report only reflects complaint relating to traumatic pain and there is nothing in the report to suggest as to who inflicted the physical assault to the complainant.

Having considered the totality of the circumstances and the principles set out by the Hon’ble Supreme Court in similar set of facts and circumstances, I am of the opinion that further continuance of the instant proceedings against the present petitioners who happen to be the wife and the relations of the wife is abuse of the process of law and

would result in miscarriage of justice. Consequently, all further proceedings arising out of Andal Police Station Case No. 82 of 2020 dated 01.03.2020 under Sections 447/323/379/506 of the Indian Penal Code (corresponding to G.R. Case No. 346 of 2020) and the charge-sheet No. 75 of 2020 dated 16.03.2020 under Sections 447/341/323/506/34 of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Durgapur are hereby quashed.

Accordingly, the revisional application being CRR 568 of 2021 is allowed.

All pending connected applications, if any, are consequently disposed of.

Case diary be returned to the learned advocate appearing for the State.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)