

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 837 of 2020

Moumita Mallick Das

Vs.

The State of West Bengal & Anr.

For the Petitioner : Mr. Angshuman Chakraborty,
Mr. S.S. Saha.

For the State : Mr. Arijit Ganguly,
Mr. Sanjib Kumar Dan.

For the Opposite Party : None.

Heard on : 12.07.2023

Judgment on : 27.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding being GR Case No. 8484/2019 arising out of Narendrapur Police Station Case no. 1550 of 2019 dated 28.11.2019 under Sections 448/427/379/506/34 of the Indian Penal Code now pending before the Learned Additional Chief Judicial Magistrate, Baruipur, South 24 Parganas.

2. The petitioner's case is that the marriage was solemnized between the petitioner and opposite party no. 2 on 23.01.2009 according to Hindu Rites and Customs. The petitioner and the opposite party no. 2 settled at Delhi for their job. In the year 2003 the opposite party no. 2 left his job at Delhi and returned to Calcutta.
3. After returning from Delhi, the petitioner was subjected to mental and physical torture by the opposite party no. 2 and she was abused with filthy languages in regular course and also was doubted of leading an adulterous life with others.
4. On 25.12.2018 the petitioner was brutally tortured by the opposite party no. 2. On the hue and cry of the petitioner, neighbours and father of the petitioner no. 1 rescued her from the clutches of the opposite party no. 2. Finding no other alternative the petitioner filed a written complaint before the officer-in-charge of the Narendrapur Police Station on the basis of which Narendrapur Police Station Case No. 193/2018 dated **27.12.2018** under Section 498A of the Indian Penal Code was started against the opposite party no. 2.
5. The petitioner on **17.09.2019** also filed a complaint under Section 156(3) of the Code of Criminal Procedure before the Learned Additional Chief Judicial Magistrate, Baruipur, South 24 Parganas, with a prayer that the Learned Magistrate be pleased to exercise his power under Section 156(3) of the Code of Criminal Procedure and direct the Officer-in-Charge to the concerned Police Station to initiate a case by treating the petition of complaint as F.I.R. under Section 406 of the Indian Penal Code and by an order dated 27.09.2019, the said application was treated

as a complaint under Section 200 of the Code of Criminal Procedure and was transferred before the Learned Additional Chief Judicial Magistrate, Baruipur for disposal.

6. It is stated that in retaliation, for filing the aforesaid cases, the opposite party no. 2 made a written complaint before the Officer-in-Charge of Narendrapur Police Station being Narendrapur Police Station Case No. 1550/2019 dated 28.11.2019 under Sections 448/427/379/506/34 of the Indian Penal Code against the petitioner. In this written complaint it was inter alia alleged as follows:-

“That when the complainant visited to his residence found that flat has been trespassed by 5 or 6 persons and they also changed the door lock and replaced it with another. The complainant suspected that there has been an incident of theft at his flat while the complainant was absent and the complainant was repeatedly receiving threat call from Moumita Mallick, Sudip Bhattacharya, Malay Sengupta”.

7. **Mr. Angshuman Chakraborty, learned counsel for the petitioner** has submitted that the entire allegation made in the F.I.R. does not construe any offence punishable under Sections 448/427/379/506/34 of the Indian Penal Code, hence, the impugned proceeding is liable to be quashed as the instant criminal proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the petitioners and with a view to spite them who has a deep root in society due to family grudge and such a proceeding is an abuse of process of Court and as such is liable to be quashed.

8. Mr. Arijit Ganguly, learned counsel for the State has placed the case diary.

9. From the materials on record, it appears that:-

- (a) The petitioner (wife) has filed Narendrapur Police Station Case No. 193/2018 under Section 498A of the Indian Penal Code on 27.12.2018, **ten years after marriage** against the opposite party no. 2 (husband).
- (b) The petitioner has also filed a separate case against the opposite party no. 2 on 17.09.2019 under Section 406 of the Indian Penal Code.
- (c) The present case has been filed by the opposite party no. 2 against the petitioner, who allegedly, broke into his flat with others and changed the lock and committed theft. The petitioner and her family are also allegedly make threatening calls to the opposite party no. 2/husband.

10. Thus, the dispute is totally a matrimonial dispute between the parties.

11. In *Ramveer Upadhyay & Anr. Vs The State of Uttar Pradesh & Anr., Special Leave petition (CRL.) No. 2953 of 2022*, the Supreme Court on 20.04.2022 held:-

“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under **Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under **Section 482** of the Cr.P.C. to quash the criminal proceedings. As**

*observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Atrocities Act. **Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.....***”

12. The following guideline of the Supreme Court in **M/s Neeharika Infrastructure vs. The State of Maharashtra** becomes applicable in this case.

13. The Supreme Court in **M/s Neeharika Infrastructure Vs. The State of Maharashtra (on 13 April, 2021), in Criminal Appeal No. 330 of 2021**, citing several precedents held:-

“ * * * * *

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

vi) Criminal proceedings ought not to be scuttled at the initial stage;

ix) The functions of the judiciary and the police are complementary, not overlapping;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

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14. From the materials on record including the case diary a prima facie case appears against the petitioner herein and this Court is not inclined to interfere with the proceedings pending before the trial court.
15. But considering the nature of dispute, the learned Magistrate is directed to refer the **matter for Mediation** to the District Legal Services Authority before proceeding with the case.
16. **The revisional application being CRR 837 of 2020 is accordingly dismissed.**
17. All connected applications, if any, stands disposed of.
18. Interim order, if any, stands vacated.
19. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
20. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)