

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1108 of 2022

Sujoy Senapati & Ors.

Versus

The State of West Bengal & Anr.

For the Petitioner : Mr. Aritra Bhattacharya, Adv.
Mr. Suryadipta Bairagya, Adv.

For the State : Mr. Debasish Roy, Ld. P.P.
Ms. Faria Hossain, Adv.
Mr. N.P. Agarwal

Heard on : 23.11.2023

Judgment on : 01.12.2023

Ajay Kumar Gupta, J:

1. This instant revisional application has been filed by the petitioners under section 482 of the Code of Criminal Procedure,

1973 seeking quashing of the proceedings being G.R. Case No. 788 of 2021 pending before the Court of the Learned Additional Chief Judicial Magistrate, Kalyani, Nadia arising out of Haringhata Police Station Case No. 281/2020 dated 12.11.2020 under Sections 498A/34 of the Indian Penal Code.

2. It is the specific case of the petitioners that a written complaint was lodged by the wife/opposite party no. 2 on 12.11.2022 implicating her husband and even distances relatives of the petitioner no. 1 without any specific allegation. Petitioner no. 1 is the husband, petitioner no. 2 is the father-in-law, petitioner no. 3 is mother-in-law, petitioner no. 4 is married sister-in-law of the opposite party no. 2 and the petitioner no. 5 is the daughter of petitioner no. 4. Opposite party no. 2 fails to disclose cognizable offence against the present petitioners as would be evident from a plain reading of the FIR and charge-sheet. The opposite party no. 2 made vague and omnibus allegation against the petitioners. Complaint was lodged after long delay of more than 5 months. In spite of the said facts, the IO of this case, without examining the witnesses, filed a charge-sheet against the present petitioners. Even a neighbour, who has been allegedly shown as a charge-sheeted witness has sworn an affidavit before the Judicial Magistrate, 1st Class stating therein that he had never been

examined by the Investigating Officer. He also never gave any statement against the present petitioners. Accordingly, the entire proceeding is an abuse of process of law which is liable to be set aside to ensure the end of justice. He relied three judgments to support his contention that in a vague and omnibus allegation, a proceeding cannot be continued, which are as follows:

- i. Preeti Gupta and Another Vs. State of Jharkhand and Another, (2010) 7 Supreme Court Cases 667,*
- ii. Abhishek Vs. State of Madhya Pradesh, 2023 SCC OnLine SC 1083,*
- iii. Sushil Kumar Sharma Vs. Union of India and Others, (2005) 6 Supreme Court Cases 281.*

3. On the other hand, learned Advocate appearing on behalf of the State produced case diary and vehemently submitted there is specific allegation against the present petitioners. De-facto complainant/opposite party no. 2 was married to the petitioner no. 1 on 26.02.2020 as per Hindu Rights and Customs and at the time of marriage, some gold ornaments were given. After few days of her marriage, the opposite party no. 2 was subjected to physical and mental torture by the petitioners on demand of 40 Voris of gold

ornaments from her parent house. They even did not provide sufficient food to the opposite party no. 2. She had to take even biscuits with permission of accused persons. She compelled to live matrimonial home due to continuous physical and mental torture and finally having no alternative lodged FIR against the present petitioners and subsequently after completion of investigation, a prima facie case has been established against the present petitioners. FIR as well as charge-sheet is disclosing the cognizable offence against the present petitioners. Accordingly, the criminal revision is liable to be dismissed.

4. Heard the submissions of both sides and on perusal of the FIR as well as statements recorded under Section 161 of the Cr.P.C. of the neighbour as well as near relatives during investigation, it reveals the petitioners were tortured the opposite party no. 2 physically and mentally. After few days of marriage, she had to leave her matrimonial home and now she is residing with her parents' house. It also appears from the statement of the witnesses that they were involved in the alleged cognizable offence as alleged. Accordingly, charge-sheet has been submitted against them. The Ld. Advocate for the petitioners filed an affidavit of one witness showing that he had not been examined and he had not given any statement

to the investigating officer is purely a matter of trial. In such a situation, aforesaid proceedings cannot be quashed. The FIR has specifically disclosed the commission of cognizable offence against the present petitioners. She was subjected to cruelty both physically and mentally by her husband and other in-laws due to non-fulfilment of demand of dowry. Furthermore, petitioners also not allowed her to eat even biscuits without their permission. Opposite party no. 2 also explained about the delay in lodging complaint in her written complaint. It is not that she lodged a complaint in a heat of a moment over trivial issue. She lodged complaint after some time explaining reason for delay on her conscious mind as it appears from the written complaint. Furthermore, it has been established prima facie case against the petitioners under Section 498-A/34 of the Cr.PC after investigation. It is for the complainant to substantiate the allegations by evidence at a later stage as such petitioners failed to prove any grounds for quashing of the proceeding.

5. The judgments cited by the learned advocate appearing on behalf of the petitioners also not give strength to this Court to come to conclusion to quash the aforesaid proceeding since in **Preeti Gupta and Another Vs. State of Jharkhand and Another**¹ the

¹ (2010) 7 Supreme Court Cases 667

Hon'ble Supreme Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed that the Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases, as allegations of harassment by husband's close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection. But here the case in hand is different. She was tortured at matrimonial home both physically and mentally while she was residing with her husband and in-laws. Petitioners failed to establish that in-laws were residing in different cities and never visited or rarely visited.

6. In **Abhishek Vs. State of Madhya Pradesh**² the Hon'ble Supreme Court opined in the case that the allegations against the appellant are wholly insufficient and prima facie do not make out a case against the accused persons. However, in the instant case prima facie there is a sufficient material in the charge sheet against the

² 2023 SCC OnLine SC 1083

accused persons. It is for the complainant to substantiate the allegations by evidence at a later stage in trial.

7. In **Sushil Kumar Sharma Vs. Union of India and Others**³ the Hon'ble Supreme Court held that there is no substance in the plea that Section 498(A) IPC has no legal or constitutional foundation mere possibility of abuse of process of law does not per se invalid the legislation. Petitioners herein failed to establish proceeding is frivolous or vexatious or abuse of process of law.

8. We should not forget, the Hon'ble Supreme Court in **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others**⁴ has laid down the several principles to be followed by the Court while exercising its power under Section 482 of the Cr.P.C. or under Article 226 of the Constitution of India out of those principles, few are as follows:-

“i) 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).

³ (2005) 6 Supreme Court Cases 281

⁴ (2021) SCC Online SC 315

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

iii) *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

iv) *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;*

v) *While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*

vi) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an*

appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

vii) When a prayer for quashing the FIR is made by the alleged accused and the Court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The Court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the Court has to permit the investigating agency/police to investigate the allegations in the FIR;"

9. In view of the above facts and circumstances, petitioners are failed to satisfy sufficient or logical grounds to quash the proceeding of G.R. Case No. 788 of 2021, pending before the Court of the Learned Additional Chief Judicial Magistrate, Kalyani, Nadia arising out of Haringhata Police Station Case No. 281/2020 dated 12.11.2020 under Sections 498A/34 of the Indian Penal Code.

10. Accordingly, **CRR 1108 of 2022** is dismissed on contest without order as to costs.

11. Interim order, if any, shall be vacated.

12. Case diary be return to the Ld. Advocate appearing on behalf of the State.

13. Let the copy of the judgment of this Court be sent to the learned Court below for information.

14. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)