

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 1027 of 2018****IN THE MATTER OF****Bijol Kumar Dutta & Ors.****Vs.****The State of West Bengal & Anr.****For the Petitioners : Mr. Prabir Kumar Mitra Adv.,
Ms. Puja Goswami Adv.****For the OP No. 2 : Mr. Sujoy Sakar, Adv.,
Mr. Rahul Chauhan, Adv.****For the State : Mr. Swapan Banerjee Adv.,
Mr. Suman De Adv.****Judgment on : 22.12.2023****Subhendu Samanta, J.**

This is an application u/s 482 read with Section 408 of the Code of Criminal Procedure for quashing of a proceeding of Durgapur Police Station Case No. 32 of 2017, dated 10.01.2017 u/s 498A/323/307/506/120B IPC corresponding to GR Case No. 77 of 2017 subsequently charge sheet u/s 498A/323/307/506/120B IPC has been submitted which is

now pending before the Learned Additional Chief Judicial Magistrate Durgapur.

The brief fact of the case is that the present opposite party No. 2 got married with one Partha Sarathi Dutta on 19th day of November 2013. The present petitioner No. 1 and 2 are the father-in law and Mother-in law, petitioner No. 4 is the sister of Parth Sarathi and petitioner No. 3 is the husband of petitioner No. 4. The opposite party No. 2 lodged a petition of complaint u/s 156 Sub- clause 3 before the court of the Learned ACJM Durgapur vide MP Case No. 645 of 2016 contending inter alia that after marriage of OP No. 2 started residing at the house of her husband. At the time of marriage of dowry amounting to Rs. 1,60,000/- and other house hold articles were given. After astamangala the accused person started physical and mental torture upon the Opposite Party No. 2 on demanding of more dowry. Thereafter the husband of Opposite Party No. 2 brought her to a flat situated at Durgapur. It is further alleged that the flat was purchased at the cost of Rs. 6,00,000/- given by the father of the OP 2 it was further alleged that the husband of the OP 2 had a relation with another girl. It has been alleged that in the month of July the accused person came at Durgapur and physically assaulted her on the ground to transfer the flat in the name of her

husband. Again the assault had been taken place in the month of September.

On the basis of the said petition of complaint the Learned Magistrate has forwarded the same to the Durgapur PS for registering a specific case after treating the petition of complaint as an FIR. The police has took up the investigation after registering Durgapur PS case No. 32 of 2017 dated 10.01.2017 u/s 498A/323/307/506/120B IPC read with Section 3/4 of DP act. Investigation of the police has ended in charge sheet vide charge sheet No. 201 of 2017 dated 31.05.2017 against all the accused persons u/s 498A/323/307/506/120B IPC.

Learned Advocate for the petitioner submits that the petitioner of complaint lodged by the OP No. 2 is a concocted and purposive. Some false allegations were raised against the present petitioner. The present petitioner No. 1 and 2 are the aged persons and admittedly they are residing separately. Petitioner No. 4 is the sister of husband of OP 2 petitioner; No. 3 is the husband of petitioner No. 4 they are residing separately and they are not in a way connected with the alleged occurrence of offence. The allegations are baseless and were filed with blank motive only to harass and humiliate the petitioners. He further argued that the instant criminal

proceeding against the present petitioner is liable to be quashed, by virtue of decision of Hon'ble Supreme Court passed in **Priyanka Sribastava Vs. State of Ors. (2015) 6 Supreme Court 278.**

He further argued that--

The Learned Magistrate must not accept the petition of complaint and allowed the same to be registered by the police as an FIR. The petition of complaint does not mention about the prior intimation to the police u/s 154(1) Cr.P.C. and also applicability of provision u/s 154(3) Cr.P.C. Actually at the time of filing the alleged petition of complaint the petition u/s 154(1) or Section 154(3) Cr.P.C was not at all in existence. Learned Magistrate has acted wrongfully without going through and/or following the specific directions passed by the Hon'ble Supreme Court in **Priyanka Srivastava** (supra). He also argued that the allegations in the FIR are concocted. There are no specific allegations against all the accused persons. The present petitioners are being the relatives of the husband only, arrayed as an accused in this case to harass. The Hon'ble Supreme Court in several judgments as held that when the allegations are general and omnibus against the relative of the husband, then the criminal proceeding against the relatives liable to be quashed. Learned Advocate has referred some

decisions of Hon'ble Supreme Court which are set out as follows:

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6. Having heard the Learned Counsel on both sides, we have perused the impugned order and other material placed on record. The quashment petition was filed before the High court by the A-5 to A-7. So far as A-5 is concerned, as she died during the pendency of the proceedings, cause did not survive. So far as A-7, who is the wife of A-6, is concerned, the High Court has observed that there are no specific overt acts against her and she has been residing in a different address and at no point of time she had been in a joint family wherein the de-facto complainant lived during the period the alleged demand of dowry is said to have been made. On the aforesaid ground, the High Court has quashed the proceedings so far as A-7 is concerned. So far as appellant A-6 is concerned, the petition is dismissed by the High Court observing that there are some averments against the appellant. It is not in dispute that the appellant A-6, who is the husband of A-7, was residing at a different address during the time alleged demand was made. Further, we have perused the complaint filed by the 2nd respondent. Mainly the specific allegations are only against the husband and immediate family members. So far as the appellant who is A-1's paternal uncle's son, a bald allegation is made that he along with his mother and wife were abusing the complainant. In absence of any specific allegations against him, we are of the view that the appellant also stands on the same footing of A-7, against whom proceedings are quashed. As the appellant was not even residing in the address of the complainant and his family members who are A-1 to A-4 and in absence of specific allegations and overt acts,

we are of the view that if the proceedings are allowed to go on against the appellant, it amounts to abuse of process. Applying the ratio laid down in the judgment of this Court in State of Haryana v. Bhajanlal, we are of the view that it is a clear case which falls within one of the categories of the aforesaid case where power can be exercised under Sections 482 Cr.P.C. to quash the proceedings.

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25. There being no specific allegation regarding any of the applicants except common general allegation against everyone i.e. "they started harassing the daughter of the applicant demanding additional dowry of one crore" and the fact that all relatives of the husband, namely, father, mother, brother, mother's sister and husband of mother's sister have been roped in clearly indicate that application Under Section 156(3) Code of Criminal Procedure was filed with a view to harass the applicants. Further, prior to filing of the application Under Section 156 (3) code of Criminal Procedure there was no complaint at any point of time by the girl or her father making allegation of demand of any dowry by any one of the applicants.

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27. We, therefore, deem it just and legally appropriate to quash the proceedings initiated against the Appellants Geeta Mehrotra and Ramji Mehrotra as the FIR does not disclose any material which could be held to be constituting any offence against these two Appellants. Merely by making a general allegation that they were also involved in

physical and mental torture of the complainant-Respondent No. 2 without mentioning even a single incident against them as also the fact as to how they could be motivated to demand dowry when they are only related as brother and sister of the complainant's husband, we are pleased to quash and set aside the criminal proceedings in so far as these Appellants are concerned and consequently the order passed by the High court shall stand overruled. The appeal accordingly is allowed.

The Learned Advocate appearing on behalf of the opposite party submits that the present opposite party No. 2 is a destitute lady. Due to severe torture both physically and mentally, inflicted upon her by the husband and in laws at her matrimonial home; she forced to live separately. The allegation made in the petition of complaint is specifically against each and every accused petitioner. The investigation of the police is ended in charge sheet. At this stage the court cannot quash the entire charge sheet which appears to be justified after long investigation of the police.

He again argued that by virtue of the decision in State of **Haryana Vs. Bhajanlal** the allegation made in the petitioner of complaint, if taken to be true, that can make difference a case against the petitioner punishable u/s 498A/406 of IPC.

He further argued that the Hon'ble Supreme Court has specifically observed in **Taramani Parekh Vs. State of M.P.**

that the ratio of **Gita Mehrata** is not good in law. He referred the Paragraph 15 of the **Taramani Parekh**.

15. There are allegations against Respondent No. 2 and his parents for harassing the complainant which forced her to leave the matrimonial home. Even now she continues to be separated from the matrimonial home as she apprehends lack of security and safety and proper environment in the matrimonial home. The question whether the Appellant has infact been harassed and treated with cruelty is a matter of trial but at this stage, it cannot be said that no case is made out. Thus, quashing of proceedings before the trial is not permissible.

The Learned Advocate appearing on behalf of the private opposite party further submits that the power of quashing of High Court is a very limited power. By using said power the High Court cannot put an end of a criminal investigation.

Heard the Learned Advocates. Heard the State.

Perused the entire case docket produced by the State.

It is true that the Hon'ble Supreme Court has specifically observed in **Priyanka Srivastava** (supra) that the power of the Magistrate u/s 156 Sub- Clause 3 has been misused seveourly. To stop such menace the Hon'ble Supreme Court guided the specific principle. It is required to set out the paragraph 29 to 32 of the **Priyanka Srivastava**---

29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the

stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. application are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the Learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154 (3) while filing a petition under Section 156 (3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This

will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/ family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/latches in initiating criminal prosecution, are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

32. The present lis can be perceived from another angle. We are slightly surprised that the financial institution has been compelled to settle the dispute and we are also disposed to think that it has so happened because the complaint cases were filed. Such a situation should not happen.

The guideline of the Hon'ble Supreme Court directed to exercise of power u/s 156 (3) Cr.P.C. the Magistrate must have satisfied regarding the existence of prior application Section 154(1) Cr.P.C. and 154 (3) Cr.P.C. It has been further guided that the petition u/s 156 (3) CrP.C. should be clearly spelt out regarding the prior applications. In this case the petition of complaint of the as PW 2 did not mentioned about earlier petitions to police, and/or when she approached to the police, admittedly the prior application u/s 154 (I) Cr.P.C or 153(3) Cr.P.C. has not in existence or, has not been spelt out in the

alleged petition of complaint. In that score criminal proceeding initiated before the Learned Magistrate by virtue of petition u/s 156 (3) is not in a conformity with the guideline of Hon'ble Supreme court passed in **Priyanka Srivastava**.

Each and every case of matrimonial torture upon a married woman at her matrimonial home has its distinct materials. In this particular case, it has been averted in the petition of complaint that since the initiation of marriage there was a demand of dowry and there were torture for non-fulfilling such demand. Admittedly petitioner No. 3 and 4 are the sisters and husband of the sister of the husband of the OP. No. 2.

It has also proved that petitioner No. 1 and 2 are the old parents- in- law of the de- facto complainant. The fact goes to show that the present de-facto complainant was residing in a flat at Durgapur along with her husband since long. It has been alleged that the petitioners forced her to transfer the flat in the name of the husband.

The state has submitted charge sheet and placed the entire CD before the court I have perused the CD. The CD contains only one statement of the de-facto complainant which is totally contradictory to the petition of complaint. Other two statements of neighbours stated nothing about the implication of the present petitioners in the alleged offence. The materials

goes to show that the allegations made in the petition of complaint as well as materials collected by the investigating agency during the course of investigation does not disclose any offence punishable u/s 498A/406/323 IPC against the present petitioners.

According to the observation made above I am of a view that the instant petition of complaint u/s 156 Sub-Clause (3) of Cr.P.C. which initiated the criminal proceeding has violated the principle of law enumerated by the Hon'ble Supreme Court in **Priyanka Srivastava** (supra). Furthermore the allegation in the petition of complaint as well as the materials and evidences collected by the investigating agency against the present petitioners who are the relatives of the husband of the OP 2, does not make out the case as alleged. If the criminal proceeding is allowed to be continued, it would be tantamount to be an abuse of process of court.

Accordingly I find merit in the instant criminal revision and the same is hereby allowed.

The criminal Proceeding of Durgapur PS case No. 32 of 2017 dated 10.12.2017 corresponding to GR Case No. 77 of 2017 pending before the Learned ACJM Durgapur is hereby quashed.

The CRR along with connected CRAN applications are disposed of.

Any order of stay passed by this court during the continuation of the instant criminal revisions is hereby vacated.

CD be returned at once.

Any order of stay passed by this court during the pendency of the instant criminal revision is hereby vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)