

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Before:

The Hon'ble Mr. Justice Jay Sengupta

C.R.R. 1154 of 2019

Smt. Priti Mukherjee & Ors.

Vs.

State of West Bengal & Anr.

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

For the State : Mr. Saswata Gopal Mukherjee Id. PP,
Mr. Imran Ali,
Ms. Debjani Sahu.

Heard on : 18.07.2023

Judgement on : 18.07.2023

Jay Sengupta, J. :

1. This is an application praying for quashing of a proceeding in GR Case No.1876 of 2018 presently pending before the learned Additional Chief Judicial Magistrate, Durgapur, Paschim Burdwan in which a charge sheet was submitted under Sections 341, 323 and 507 read with Section 34 of the Penal Code.

2. Several notices were given to the opposite party, but he refused to appear although at an initial stage, he was represented once.

3. Learned counsel appearing on behalf of the petitioners submits as follows. The marriage between the petitioner no.1 and the opposite party no.2 was solemnised on 14.07.2009. It was registered under the Hindu Marriage Act on 09.10.2009. The opposite party no.2 got an appointment under compassionate ground at the Eastern Coal Fields Limited after the death of her father. On 27.04.2013, he sent the petitioner no.1 to her paternal home while she was in the family way and stopped further contact with her. On 29.11.2013, a female child was born with cleft palate defects and in spite of repeated requests for financial support, the opposite party no.2 did not provide any. The defect was surgically repaired with a financial support of the petitioner's relatives on 21.08.2014. The petitioner was constrained to file an application under Section 125 of the Code praying for maintenance for herself and for the minor child. After the opposite party no.2 came to learn about the maintenance case, he filed a suit for restitution of conjugal rights before the learned District Court, Durgapur, Burdwan. On 18.11.2015, the matrimonial suit was transferred to the District of Birbhum pursuant to an order passed under Section 24 of the Code of Civil Procedure. The same was subsequently dismissed for default for non-appearance of the opposite party no.2. In 2015 itself, the petitioner no.1 filed an application under the Protection of Women from Domestic Violence Act. The learned Magistrate allowed maintenance to the tune of

Rs.3000/- per month to the petitioner no.1 and Rs.2500/- for the minor child. In 2016, the husband filed for divorce at Birbhum. The learned revisional Court at Birbhum enhanced the maintenance amount to the tune of Rs.3500/- per month to the minor daughter and refused to interfere with the maintenance granted to the petitioner no.1. On 03.12.2018, the learned District Judge, Birbhum on an application filed under Section 24 of the Hindu Marriage Act directed the opposite party no.2 to pay Rs.8000/- per month to the petitioner no.1 and Rs.5000/- per month to the minor daughter and to pay Rs.15000/- as litigation cost. As a counterblast, the opposite party no.2 thereafter filed an application under Section 156(3) of the Code leading to the registration of the present FIR. A purported charge sheet was submitted in December, 2018. Due to non-compliance of the order passed under Section 24 of the Hindu Marriage Act, the matrimonial suit had to be adjourned. In 2020, by another similar application under Section 156(3) of the Code filed in the opposite party no.2, Andal Police Station Case No.82 of 2020 was registered under Section 447, 323, 379 and 506 of the Penal Code. A charge sheet was submitted therein. However, by an order dated 06.02.2023 passed by this Court in CRR No.568 of 2021, the entire proceeding was quashed. The subsequent FIR was an exact replica of the present FIR. No prima facie case is made out as would be evident from a plain reading of the instant First Information Report and the charge sheet. Any further continuation of the impugned proceeding shall be an abuse of

the process of Court. The proceeding was actuated by malice to somehow counter the proceedings initiated by the wife.

4. Learned counsel appearing on behalf of the State relies on the case diary and submits as follows. A prima facie case is not made out as would be evident from a plain reading of the First Information Report and the statements of witnesses. Therefore, technically the proceeding could not be quashed.

5. I have heard the submissions of the learned counsels appearing on behalf of the parties and have perused the revisional application and the case diary submitted by the State.

6. The statement of the de facto complainant itself falls short of the grievous nature of allegations that he went on to portray in the FIR. Even the allegations levelled in the FIR do not make out a cognizable case. He also feigned ignorance about any documents about his purported treatment. Similar is the statement of his mother, bereft of any matrimonial particulars.

7. The other statements contained in the case diary being that of the driver of the car the de facto complainant had hired and the two neighbours who had rushed to the spot only show that there was an altercation between the two sides. But, they did not witness any incident of assault or anything that could remotely hint at the occurrence of a culpable act.

8. Therefore, I find that no prima facie case is made out in the instant proceedings as would be evident from a plain reading of the First

Information Report, the charge sheet and the statements of witnesses and other materials contained in the case diary.

9. Accordingly, the impugned proceedings are quashed.

10. Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)

Sl. 355/NB