

April 26, 2023
AD – 41
Ct. 34
SG

CRR 1498 of 2021

In Re. An application under Section 401 read
with Section 482 of the Code of Criminal
Procedure, 1973.

Simon Pulok Gomes and others
-versus-
The State of West Bengal and another

Md. Sabir Ahmed
Mr. Subhankar Chakraborty
Ms. Ruchira Manna
... for the petitioners.

Mr. Sudip Ghosh
Mr. Bitasok Banerjee
... for the State.

Learned advocate appearing for the petitioners challenges the charge-sheet being No.161 dated July 15, 2020 filed in connection with Entally Police Station Case No.312 of 2017 dated September 8, 2017. Learned advocate has drawn the attention of this Court regarding Talaknama which was executed on 21.08.2014. He also draws the attention of this Court to the communication made to the investigating officer wherein in the reply it has been claimed that the said Talaknama was brought to the notice of the investigating officer.

The present case was initiated on the basis of the complaint lodged by one Sayeeda Amaan on or about 06.09.2017, it was alleged that she had an affair with Md. Moaz @ Simon Pulok Gomes and on or about 1995 and they decided to marry. On 07.10.2000 the marriage was solemnized as per Muslim rites and customs and according to the Muslim law in presence of Kazi, parents, friends, relatives, neighbours and well wishers, the marriage

ceremony was held at Tipu Sultan Shahi Masjid at 185, Dharamtalla Street, Kolkata-700013. Before marriage her husband changed his caste and sworn an affidavit for conversion of religion and he embraced Islam on his own choice and free will. At the time of marriage her parents gave gifts and stridhan according to their capacity and as per demand of husband gold ornaments, wrist watch, gold finger ring, utensils and other materials including furniture, bed and other items were gifted. After marriage her husband started living together peacefully and happily but after few days she was subjected to abuse by hurling filthy languages for demand of dowry.

It has been further alleged that her husband was greedy and demanded more and more dowry from her parents which included a flat and cash Rs.5 lakhs along with valuable gold ornaments. Her husband was doing service in Dubai in a reputed star hotel. At the time when he was abroad, he forced her to bring Rs. 5 lakhs in the month of August, 2016. Her in-laws sold out the residential flat with the consent of her husband with a condition to purchase a new flat by her parents. A child was born out of the said wedlock on or about 15.12.2003. She further contended that her husband caught her hair and pulled her inside the kitchen and poured kerosene oil to set her ablaze and she somehow saved herself with the assistance of the neighbours residing at adjoining flat. The complainant states that she was subjected to torture physically and mentally for demand of dowry and in spite of lodging complaints to several departments for relief, her husband and in-laws attempted to kill her by pressing throat and neck. On 06.09.2017 she heard that her husband came to Kolkata, she went to the said house, the in-laws and her husband jointly quarrelled for flat and money. At about 8.30 am they started torture and assaulted her with the intention to kill her. She fled away

to the Calcutta National Medical College and Hospital and was treated there and discharged.

There are other allegations which are not gone into at this stage because of the fact that the main thrust of the contention of learned advocate appearing for the petitioner is that there was a divorce in the year 2014 and the lady has made a complaint to the police station in spite of being a divorced wife in the year 2017. The allegations made in the FIR do not spell out regarding the Talaknama or divorce having taken place. Rather, it has been stated that on 06.09.2017 the complainant came to Kolkata when she was allegedly assaulted. The documents so relied upon should be construed in the background of the allegations, the truth and genuinity of the same are to be ascertained. The petitioner claims that such a document was forwarded to the investigating officer. The investigating officer in spite of the same on the basis of the allegations made by the complainant proceeded to submit charge-sheet on the basis of the materials collected.

Learned advocate submits that in the Talaknama the wife also signed the same. There is no claim in the complaint that the complainant is a divorced wife, rather she claims herself to be wife at least till the incident of 2017 taken place.

The truth or genuinity of the document referred i.e. the Talaknama of the year 2014 cannot be considered by this Court. While deciding an application under Section 482 of Cr.P.C. this Court will not test the intrinsic value of a document and the unimpeachable character associated with the same until and unless from the prosecution case the same can be inferred.

Having considered the foundation on which the present revisional application has been preferred for interference by this Court, I am of the opinion that this

Court is not empowered to adjudicate the issues on which quashing has been preferred.

The petitioner would be at liberty to canvass the additional points in an application under Section 239 Cr.P.C. before learned Judicial Magistrate within a month from date. Learned Magistrate after giving an opportunity to the petitioner would dispose of the said application by 31st July, 2023.

With the aforesaid observations, CRR 1498 of 2021 is disposed of.

Pending application, if any, is consequently disposed of.

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

(Tirthankar Ghosh, J.)