

02.08.2023
Serial no. 393
[G.S.D]

CRR 1591 of 2021

In the matter of : Poornima Ghosh

... .. Petitioner

Mr. Apalak Basu
Mr. Nazir Ahmed
Ms. Snehal Seth

... For the Petitioner

Mr. Tapan Datta Gupta
Mr. Saurabh Guha Thakurata
Ms. Nilanjana Sarkar

... For the O.P. No.2

Mr. Saswata Gopal Mukherjee
Mr. Narayan Prasad Agwarwala
Mr. Pratick Bose

... for the State

This revisional application has been preferred challenging the further continuance of Bansdroni P.S. Case No. 98 of 2021 dated 24.6.2021 under Sections 498A/406/506/34 of the Indian Penal Code read with Sections 3 & 4 of the Dowry Prohibition Act, 1961 filed by one Poornima Ghosh.

During pendency of the revisional application, it has been submitted that charge-sheet was submitted before the jurisdictional Court against all the accused persons, who were named in the First Information Report except one, Shubhasish Sharma Sarkar, who was the superior office

colleague of the husband of the defacto-complainant/the O.P. No.2.

Mr. Basu, Learned Advocate appearing for the petitioner, submits that even if the allegations made in the letter of complaint, which has been treated to be the First Information Report, are taken to be true, there are no incriminating allegations appearing against the present petitioner in respect of the complicity of the alleged offence under Sections 498A/406/506/34 of the I.P.C.

The petitioner, as is reflected from the letter of complaint, happens to be the grandmother of one Anasuya Ghosh, against whom there was an allegation that she had an illicit relationship with the husband of the defacto-complainant, namely, Jyotirmoy Biswas.

Mr. Tapan Datta Gupta, Learned Advocate appearing for the Private O.P. No.2/defacto-complainant, submits that there were overt act of the present petitioner in the manner that she had shouted to the complainant when the complainant wanted to bring it to the notice of the parents and the grandmother of said Anasuya Ghosh regarding the relationship which, she had developed with her husband in spite of being a cousin sister.

Learned Advocate also submitted that as the revisional application was preferred at the stage when the investigation was in process and charge-sheet has already

been submitted before the jurisdictional Court, although the Learned Magistrate has deferred taking cognizance of the offence, this Court should not interfere with the proceedings pending before the Learned Magistrate.

Mr. Agarwala, Learned Advocate appearing for the State, has drawn the attention of this Court to the list of witnesses, who have been relied upon in the charge-sheet and to the specific allegation in the letter of complaint, which has been treated to be the First Information Report, wherein it has been alleged that the complainant having come to know the illicit relationship with said Anasuya Ghosh, who are the maternal relatives, complained to her parents and grandmother requesting them not to encourage such activities but they started shouting and abusing her badly which was supported by her husband and her father-in-law.

At the conclusion, in her further statement, the defacto-complainant, at the concluding paragraph, has alleged that her husband, father-in-law, mother-in-law, maternal uncle-in-laws, maternal-in-laws, maternal-sister-in-law and grand mother together conspired to break her family and so steps should be taken against them.

The Case Diary is produced before this Court by the Learned Advocate appearing for the State.

I have considered the materials from the point of view of the present petitioner, who happens to be the grand-mother and, on consideration of the nature of the allegations complained against her and the purpose for which the criminal case was initiated particularly under Section 498A/406/506/34 of the Indian Penal Code read with Sections 3 & 4 of the Dowry Prohibition Act, 1961, I find that the present petitioner was not involved either in retaining any *stridhan* articles or had any role to play for the demand of dowry or for that matter compelling the complainant to pay EMIs for the flat, which was purchased by her husband. The only aspect for which the petitioner was implicated in the present case was her reaction on hearing that her grand-daughter, being the cousin, was involved in a questionable relationship with the defacto-complainant's husband. The same is a single incident, which has been complained of.

Considering the judgment, which has been relied upon by the defacto-complainant/O.P. no2, reported in *[(2010) 2 Cr LR (SC) 108 (K. Neelaveni -Vs- State Rep. by Inspector of Police & Ors.)]*, wherein the facts reflects that during the subsistence of the first marriage, the husband of the petitioner married on the second occasion and in the First Information Report, it was clearly alleged that the gold ornaments and other household articles, which were given in

the marriage were retained by the accused persons and the petitioner was subjected to cruelty at the matrimonial home.

I am of the view that the cited judgment is based on separate factual circumstances.

So far as the procedural part is concerned, the attention of this Court is drawn to paragraph 11 of the said judgment, which is set out below:

"11. It is relevant here to state that offences under Sections 406, 494 and 498A are triable by a Magistrate, First Class and as all these offences are punishable with imprisonment for a term exceeding two years, the case has to be tried as a warrant case. The procedure for trial of warrant case by a Magistrate instituted on a police report is provided under Chapter XIX Part A of the Code of Criminal Procedure, 1973. Section 239 inter alia provides that if upon considering the police report and the document sent with it under Section 173 and making such examination, if any, of the accused and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing. It seems that the accused persons even before the case had reached that stage filed an application for quashing of the charge sheet under Sections 406 and 494 of the Indian Penal Code. In our opinion, the High Court ought not to have interfered after the submission of the charge sheet and even before the Magistrate examining as to whether the accused persons deserved to be discharged in terms of Section 239 of the Code of Criminal Procedure."

I have considered the totality of the circumstances and I am of the opinion that having regard to the allegations made in the F.I.R. itself, the case should not have been registered against the present petitioner and on perusal of

the Case Diary wherein the statement of different witnesses have been recorded, I do not also find the complicity of the petitioner so as to call upon her to participate in further proceedings of the instant case.

Consequently, all further proceedings so far as the present petitioner is concerned, in connection with Bansdroni P.S. Case No. 98 of 2021 dated 24.06.2021 under Sections 498A/406/506/34 of the Indian Penal Code and the charge-sheet filed therein, are hereby quashed.

Accordingly, CRR 1591 of 2021 is allowed.

Pending application, if any, is also allowed.

Parties to act on a server copy of this order, duly collected from the official website of the Hon'ble High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Tirthankar Ghosh, J.)