

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 1740 of 2018

Semanti Sahana & Anr.

Vs.

The State of West Bengal & Anr.

For the Petitioners :Mr. Prabir Kumar Mitra, Adv.
Ms. Subhanwita Ghosh, Adv.

For the State :Mr. Prasun Kumar Datta, Ld. APP.
Mr. Md.Kutubuddin, Adv.
Mr. Santanu Deb Roy, Adv.

For the opposite :Mr. Manjit Singh, Adv.
party nos. 2 Mr. Biswajit Mal, Adv.
Mr. Abhishek Bagal, Adv.

Heard on : 21.09.2023, 04.10.2023,

Judgment on :17th October, 2023

Bibhas Ranjan De, J.

1. This revision application has been filed with a prayer for quashing of the proceeding in connection with the charge sheet being no. 22/13 dated 28.09.2013 bearing G.R. Case NO. 3496/13 pending before the Learned Judicial Magistrate (2nd Court), Howrah arising out of Howrah Women Police Station Case no. 18/13 dated 18.05.2013 under Section 498A/406/323/34 of the Indian Penal Code, 1860.
2. On 18.05.2013 at about 12:15 hours the opposite party no. 2 filed a written complaint to the officer in-charge of the Howrah Women's Police Station alleging inter alia that she got married with one Suman Bandopadhyay on 22.04.1996 as per Hindu Rights and Customs. But, soon after her marriage petitioner no. 1 & 2 and other in-law members subjected her to immense physical and mental torture over demand of more dowry and involving other family matters.
3. The situation escalated even further after death of father in-law of the defacto complainant (opposite party no. 2 herein) on 01.01.2012. After the completion of rituals, the complainant and her husband were not allowed inside her matrimonial house and also all her stridhan articles including 94 grams of

ornaments were forcefully kept with the accused. Subsequently, petitioner no. 1 & 2 along with other accused used to harass the defacto complainant by hurling abuses and by threatening to kill her.

- 4.** On 14.05.2013 the defacto complainant's Orna was pulled from behind on the road itself and her hand was rubbed hard and she was pushed to the ground by the accused.
- 5.** Ld. Advocate, Mr. Prabir Kumar Mitra, appearing on behalf of the petitioners has strenuously contended that on self same cause of action earlier FIR was lodged on 07.02.2012 before Shibpur Police Station alleging offence under Section 498A/506/406/323/34 of the Indian Penal Code. After investigation of that case charge sheet was submitted accordingly.
- 6.** Mr. Mitra has further contended that subsequently on 18.05.2013 again one complaint was lodged before Howrah Women's Police Station which was registered under FIR No. 18/13 dated 18.05.2013 under Section 498A/406/323/34 of the Indian Penal Code on the same allegation. In that case charge sheet was also submitted under Section 498A/406/323/34 of the Indian Penal Code. Accordingly Mr. Mitra has submitted that second FIR is liable to be quashed.

7. Mr. Mitra has further submitted that evidences collected during investigation of this case are replica of allegations made in the first complaint where charge has already been submitted. In support of his contention following cases were relied on:-

- ***Pramatha Nath Talukdar and Surendra Mohan Basu Vs. Saroj Ranjan Sarkar*** reported in ***1962 Supp (2) SCR 297***
- ***T.T. Antony Vs. State of Kerala and others*** reported in ***2001Supreme Court Cases (Cri) 1084***
- ***Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and another*** reported in ***(2013) 6 Supreme Court Cases 348***
- ***Tajmul Hossain Shah @ Taju Shah and Anr. Vs. The State of West Bengal & Anr.*** reported in ***(2006) 1 C Cr LR (Cal) 177***

8. Ld. Advocate, Mr. Manjit Singh, appearing on behalf of the opposite party no. 2 has submitted that second FIR was lodged with allegation of assault and outrage of modesty on a particular date that too after submission of charge sheet in the first case.

- 9.** Ld. Advocate, Mr. Prasun Kumar Datta, appearing on behalf of the State has submitted that two cases are not identical. There is specific allegation in the FIR regarding an incident alleged to have been committed by the petitioners on 14.05.2013.
- 10.** Ratio of the decision of cases relied on behalf of the petitioner is that there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.
- 11.** Now the question that falls for the decision of the court is whether second FIR was lodged for the same incident alleged to have been committed by the petitioners who were already booked by the charge sheet submitted following a complaint lodged on 07.02.2012 at the instance of opposite party no. 2/ complainant or not.
- 12.** Coming to the FIR's, it comes to my view that both the FIR's lodged on 07.02.2012 & 18.05.2013 alleged the same incident of torture and capturing of Stridhan articles. In the second FIR, an incident of assault and outrage of modesty were alleged. During investigation evidence were collected by the investigating officer by recording statement under Section

161 of the Code of Criminal Procedure (for short CrPC). The complainant who lodged the FIR did not speak about any offence of assault or outrage of modesty on 14.05.2013 in her statement recorded under Section 161 of CrPC. Only two witnesses namely the husband of the complainant and sister-in-law of the complainant stated about abusive language only. Therefore, allegation of the second complaint regarding offences of assault and outrage of modesty have not been substantiated by the statement of the complainant herself. Even if I assume that petitioners hurled abusive language to the complainant on 14.05.2013 that cannot be said to be a cognizable offence which can be investigated only after obtaining permission of jurisdictional court.

13. From the aforesaid discussion it is clear that the FIR in connection with the case in hand is absolutely identical with that of the previous First Information Report save and except the offence of hurling abusive languages which is a non-cognizable offence, though not corroborated by the complainant herself at the time of giving statement under Section 161 of CrPC.

14. In the aforesaid view of the matter, I am unable to allow this proceeding to continue further as second FIR on the same

cause of action between the same parties is not permissible under the settled principle of law.

- 15.** As a result, the Proceeding in connection with the charge sheet being no. 22/13 dated 28.09.2013 bearing G.R. Case NO. 3496/13 pending before the Learned Judicial Magistrate (2nd Court), Howrah arising out of Howrah Women Police Station Case no. 18/13 dated 18.05.2013 under Section 498A/406/323/34 of the Indian Penal Code, 1860, stands quashed.
- 16.** The revision application being no. 1740 of 2018 stands allowed.
- 17.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 18.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]