

08.02.2023
S/L No.24
KS

C.R.R. 1889 of 2021
Biplab Kumar Ghosh & Ors.
-Vs.-
State of West Bengal & Anr.

Mr. S. Lahiri
Mr. S. Das
Mr. S. Chatterjee
Mr. S. Azam
Mr. P. Chandra Das

.....For the Petitioners

Mr. S. Ghosh Dastidar
Mr. S. Das Mahapatra
Ms. M. Sinha

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

Mr. S. G. Mukherjee, Ld. P.P.
Ms. F. Hossain
Mr. A. Keshari

.....For the State

The present revisional application has been preferred challenging the proceedings arising out of Dum Dum Police Station Case No.999/2015 under Sections 498A/ 325/ 506/ 34 of the Indian Penal Code and under Sections 3/4 of the Dowry Prohibition Act (corresponding to G.R. Case No.5974 of 2015) which is pending before the learned A.C.J.M., Barrackpore.

Learned advocate appearing for the petitioners submits that prior to institution of the present case, the opposite party no.2 also instituted another case being, Dum Dum Police Station Case No.404/2015 dated 29.04.2015 under Sections 498A/323/34 of the Indian Penal Code which ended in a charge-sheet being filed on 14.07.2015. However, the lady in the meantime on or about 06.05.2015 filed an application with a prayer

for non-prosecution before the Learned A.C.J.M., Barrackpore. Subsequently, the complainant on 19.10.2015 instituted another case with similar allegations which was registered as Dum Dum Police Station Case No.999/2015 dated 11.10.2015 under Sections 498A/ 325/ 506/ 34 of the Indian Penal Code and Sections 3/ 4 of the Dowry Prohibition Act against the present petitioners. The Investigating Agency on conclusion of investigation submitted charge-sheet before the jurisdictional Court.

The contention of the learned advocate appearing for the petitioners are that the complainant has abused the process of law and vindictively invoked the jurisdiction of different Courts for criminal cases as also other cases against the husband and the family members of the husband. Learned advocate submitted that in the instant case Supplementary charge-sheet was filed incorporating provisions under Section 313 of the Indian Penal Code and the same being brought to the notice of the Learned Sessions Court in seisin of the matter being learned Additional Sessions Judge, F.T.C. – I, Barrackpore was struck down. It was observed that there are no prima facie material in regard to the charges under Section 313 and there are grounds under Sections 498A/ 325/ 506/ 34 of the Indian Penal Code alleged to have been committed by the accused persons which were not sessions triable case and, as such, the learned Sessions Court transmitted the records to the learned A.C.J.M., Barrackpore for trial. According to the learned advocate appearing for the petitioners the process of law has been

abused at the instance of the complainant and the same is with the purpose of harming the husband who happens to be a Government employee. Learned advocate has also drawn attention of this Court to certain information which he has obtained by way of invoking the provisions of Right to Information Act and relying on such documents he submits that medical document so relied upon by the prosecution is a fake document.

Mr. Keshari, learned advocate appearing for the State has produced the Case Diary and drawn the attention of the Court to the medical document which was prepared by Dr. Prasanta Kumar Sinha wherein from the short history of the case, it has been written that physical assault was by the husband namely, Biplab Kumar Ghosh and his son Barnab Ghosh who hit by stick and pulled the hairs of the complainant. Serial number 11 of the said report also reflects that there are scratching of finger nails which resulted in abrasion on the back of the complainant and other injuries which were visible were referred for treatment. The incident complained of so far as the injuries are concerned are on 29.10.2015 which is a subsequent date. The medical documents relied upon by the prosecution is a document collected from N.R.S. Medical College and Hospital, Kolkata which primarily reflect on 29.10.2015 which is much after the initiation of the first case, which according to the learned advocate for the petitioners was withdrawn in the month of July, 2015.

This Court while assessing the records of the case will not check the veracity of a document that was issued by a Government Hospital and cannot consider it as a forged one until and unless overwhelming materials are produced at the instance of the accused person which are impeccable or of unimpeachable nature/startling quality. The invocation of the provisions of the Right to Information Act and the answers given therein are the subject-matter of test by way of cross-examination and cannot be considered to be a document of sterling quality to dislodge the prosecution case which has been initiated/registered on mixed question of facts which were earlier to May, 2015 and post May, 2015.

Having considered the cumulative issues involved in the present case, I am of the opinion that this is not a fit case where the case or the further proceedings are to be terminated at this stage when the complainant, till date, did not have the opportunity to express her version before a Court of Law.

Accordingly, no interference is called for.

Thus, the revisional application being, C.R.R. 1889 of 2021 is dismissed.

Pending applications, if any, are consequently disposed of.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)

