

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.R No. 2082 of 2016

**Prasenjit Maity & Ors.
Vs.
State of West Bengal & Anr.**

For the Petitioners	: Mr. uday Sankar Chattopadhyay,
For the defacto complainant	: Mr. Jayanta Banerjee, : Ms. Ruxmini Basu Roy.
For the State	: Mr. Saswata Gopal Mukherjee, Ld. P.P. : Mr. Imran Ali, : Ms. Debjani Sahu.

Hearing concluded on: 17/01/2023

Judgment on: 17/03/2023

Rai Chattopadhyay, J.

1. Petitioners in this case are husband and the in-laws of the opposite party No. 2/wife, who are aggrieved due to filing of the FIR against them by the opposite party No. 2/defacto complainant and initiation of the prosecution against them on the basis of the said FIR.

2. At the instance of the opposite party No.2/defacto complainant, Sonarpur Police Station case No.1109 of 2016 dated 16. 05. 2016 was lodged. The case was lodged under sections 498A/354D/34 of the Indian Penal Code and section 3 (x) (xii) (xv) of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act, 1989. The connected case is G.R. case No. 3905 of 2016, which is now pending in the court of Additional Chief Judicial Magistrate, Baruipur, South 24 Parganas.

3. Upon perusal of the three pages long first information report the following may inter alia be found:

The opposite party No. 2/defacto complainant is an employee under the West Bengal government and is engaged at Ghutiary Sharif B.P.H.C. She was introduced with the petitioner No.1 through the social media (Facebook) on November 21, 2014. Later on, at the intervention and with constant of all the family members of both, she was married to the petitioner No.1, on January 26, 2015. She states that she belongs to a caste considered to be lower in societal strata, than that of the petitioner No.1 and that the said fact was disclosed to the petitioner No.1 and his family members, at the very outset, to avoid any kind of misunderstanding as regards the difference of caste between them. She has stated that all the petitioners had accepted the fact of her belonging to a caste considered to be lower than that of the petitioners and had disclosed that they would have no inhibition regarding difference of caste etc. The defacto complainant has asserted in the first information report that, after marriage she resided

in her matrimonial home till March 9, 2016. Thereafter, allegedly, she was forcefully driven out by the petitioners from her matrimonial home, on March 10, 2016. She says that she has been subjected to torture and cruelty perpetrated upon her collectively by all the petitioners. That she was threatened with dire consequences while being driven out from her matrimonial home.

4. The defacto complainant has further alleged that in spite of knowing and accepting about her belonging to a caste not at par with them, she has been repeatedly humiliated by the petitioners with abuse and stigma of being hailing from one relatively lower caste. Allegedly her parents-in-law perpetrated mental torture to her by declining to accept food from her, on this ground. She has stated that the entire time which she used to spend in her matrimonial home was marred with abuse and humiliation on her belonging to a separate and inferior caste. She has alleged of always been isolated on this ground alone, be it from using the common kitchen or common washroom or even common source of water. Even then she was forced to do all the household works alone, without assistance of any domestic help. The defacto complainant has narrated that she had to attend her workplace only after completion of all the domestic works and otherwise not. According to her, even thereafter, the entire household was used to be purified with sprinkles of Ganga water as she herself has done the entire household work. She says that such kind of severe torture caused her mental collapse. Her husband has been alleged of supporting the other petitioners, who allegedly

collectively behaved in the manner with her, as narrated above. Against the husband/petitioner No.1 the defacto complainant has other specific allegations also. She says that her husband used to take her indecent photographs, without her consent and forcefully. She was allegedly threatened and blackmailed that in the event of a raising any protest to whatever behaviour she has been subjected to by the other members of the family, the husband would upload all the said indecent photographs to the social media for the purpose of its wide circulation to diminish her prestige and modesty. The defacto complainant has even alleged against the husband regarding circulating such indecent photograph of herself to his friends. Allegedly she was even threatened to be humiliated openly and also that her life was at stake. She has stated that she has also been subjected to physical torture and threat of assault by the husband, which would always be supported by the other petitioners. The defacto complainant has said that thrice she was driven out from her husband's abode by the petitioners, though her matrimonial life was restored each time, at the instance of her father. According to her, even her father was abused by her father-in-law on the ground of hailing from a lower caste.

5. The defacto complainant has also alleged that all the humiliations she endured with the hope of sustenance of the marriage. She has further stated that all her salary, passbook, cheque-book and ATM card were taken over by the husband. She was forced to pay for the electric bill and purchases for he family. She was

also forced to provide cash amount of money to her husband as well as father-in-law. According to her the mental and physical torture and also severe abuse on the ground of her belonging to a lower caste, had become unbearable. That, when she was driven out from her matrimonial home, all her “streedhan” properties were taken away from her by the petitioners. She has been threatened to be murdered if any day she would return to her matrimonial home. Allegedly the husband has not taken care of her whereabouts and severed all contacts.

- 6.** The defacto complainant has further alleged, specifically against the husband/petitioner No.1 of circulating indecent, superimposed photographs of her to undermine her social prestige. Another incident of May 1, 2016, has been alleged by the defacto complainant in the first information report that the husband along with his friends came to her paternal home to threat them to murder as well as spread social abuse against them, by circulating those indecent photographs. Pertinent to note that the defacto complainant has asserted about her knowledge regarding the 1989 Act and sought protection under the said statute.
- 7.** Mr. Uday Sankar Chattopadhyay who has appeared and represented the petitioners in this case has strongly argued that the present first information report is an outcome of malice of the defacto complainant who intends only to wreck vengeance against the petitioners and nothing else. According to Mr. Chattopadhyay the first information report has been dramatically drafted incorporating certain

untrue facts to cover up the matrimonial disharmony between the parties. Mr. Chattopadhyay would refer to the settled provision of law that unless the FIR is eloquent about a cognizable offence being made out against the accused persons, the same would not be allowed to be proceeded with and in that case the same would render only the abuse of the process of court.

8. Mr. Chattopadhyay has referred to an earlier police case lodged by the husband/petitioner No.1, being Sonarpur police Station Case No.933 of 2016 dated 01.05.2016, under sections 341/325/497/506 of the Indian Penal Code. Mr. Chattopadhyay has pointed out that the amorous lifestyle of the opposite party No.2, her illicit extramarital relationships, had compelled the petitioner No.1 to lodge the said case, much prior to lodging the present case by the opposite party No.2. It has been submitted that the said case lodged by the petitioner no.1 has resulted into filing of a charge sheet by police. A photocopy of the charge sheet has also been handed over to the court during the course of argument. Thus Mr. Chattopadhyay has deducted firstly that the materials as regards the offence alleged in the other case against the defacto complainant, are already on record and also that the instant criminal case lodged by the defacto complainant/opposite party No.2 is nothing but only a counter blast of the earlier case against her by the present petitioner No.1 and a result of malice and vengeance.

9. So far as the allegations made in the first information report by the defacto complainant against the petitioner, Mr. Chattopadhyay

would submit that none of the ingredients of offence as alleged against the petitioner could be found present in the same. According to him the allegations made therein, even if are taken on their face value would not make out a case against his clients. He has specifically pointed out that the first information report is silent and nonspeaking regarding any offensive act to have happened within the public view, as envisaged in the 1989 Act.

10. During his argument Mr. Chattopadhyay has relied on the following judgments:

- (i) ***Pramod Suryabhan Pawar vs State of Maharashtra & Anr.***, reported in **(2019) 9 SCC 608**;
- (ii) ***B. Venkateshwaran and Ors. vs. P. Bakthavatchalam***, reported in **2023 SCC Online SC 14**.

11. In ***Pramod's (supra)*** case, while considering the applicable provisions of law, the Hon'ble Supreme Court has been pleased to hold that the available specific materials, like the WhatsApp messages sent or the alleged words to have been spoken, would constitute the offence under the strict provisions of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act, 1989. By relying on the same it has been submitted that unless the charges made against the petitioners satisfy the ingredients of offence, as alleged with the help of any such specific material, the prosecution should not be allowed to be proceeded with.

12. In the judgment of ***B. Venkateshwaran (supra)***, the Hon'ble Supreme Court has deprecated any private civil dispute between the

parties to be converted into a criminal proceeding by invoking false accusations and wrong provisions of law. There the Hon'ble court has quashed the criminal proceedings being unable to find any ingredient of offence as alleged against the accused persons. According to Mr. Chattopadhyay in this case also, the defacto complainant has converted her matrimonial dispute into a proceeding under the rigours of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act, 1989. As such, he says that the same should not be allowed to prevail. Mr. Chatterjee has prayed for an order quashing the entire criminal proceeding against the present petitioners.

- 13.** To the contention and prayer of the petitioners regarding non-maintainability of the criminal proceedings and quashing of the same, vehement objections have been raised on behalf of the opposite party No.2/defacto complainant/wife. It is submitted that the first information report is enough eloquent to suggest the ingredients of offence and a cognizable case against the petitioners. It has been pointed out that the defacto complainant has categorically contended in the same regarding her being subjected to severe humiliation and abuse on the ground of her belonging to a caste considered to be not at par with that of the petitioners. It has further been submitted that the FIR has well narrated as to how the defacto complainant has been subjected to cruelty in her matrimonial life. Specific allegations have been made against the petitioners to suggest their individual role in perpetrating severe violation of mental serenity of the defacto complainant. By referring to the first information report, it has been

pointed out that how a coordinated and collaborated effort of all the petitioners have caused such trauma to the defacto complainant.

14. To controvert the argument made on behalf of the petitioners, Mr. Jayanta Banerjee representing the defacto complainant/opposite party No.2 has submitted that mere pendency of a previous police case or the same having culminated into filing of a charge sheet by police, would not render the present case as not maintainable, insofar as in the present one the defacto complainant has exhaustively and categorically brought on record the ingredient of offence, which she alleges against the petitioners. It is pointed out that while exercising power under section 482 CrPC, this court would look into as to whether the first information report speaks about presence of the ingredients of offence alleged, at least prima facie. It has further been pointed out that in that case, the court would be slow in interfering with the same. Hence, according to Mr. Banerjee, as in this case the FIR has amply indicated about presence of such ingredients, there would not be any necessity for this court to invoke its inherent power under section 482 CrPC and quash the same, as prayed for by the petitioners.

15. The following judgment has been referred to, on behalf of the opposite party No.2: ***Swaran Singh and Ors. vs. State through Standing Counsel & Anr.***, reported in ***(2008) 8 SCC 435***. In the same the Hon'ble Apex Court has held that an offence if happened in a lawn outside the house and bounded by wall, would be considered to have happened at a place within the public view, as envisaged in the

Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act, 1989. By referring to the same it has been submitted that the arguments advanced on behalf of the petitioners that the alleged offence cannot be said to have happened within the public view as per the 1989 act shall not be tenable insofar as according to the first information report the defacto complainant has been subjected to abuse in the name of her caste, even at the open spaces of her matrimonial home and not only under the roof thereof. According to Mr. Banerjee the present case filed by the petitioners is liable to be dismissed.

16. The rancour between the parties have arose in their matrimonial life and not for enmity for any other reason. The parties were introduced to each other on November 21, 2014 and were married on January 26, 2015. On March 9, 2016, the defacto complainant was allegedly driven out from her matrimonial home and since then she was living separately from her husband and other in-laws. On May 1, 2016, the petitioner No.1 lodged a criminal case against the present opposite party No.2. Within a short period of time from there, the present case was lodged by the opposite party No. 2/defacto complainant on May 16, 2016.

17. The argument on behalf of the petitioners has mainly been concentrated regarding application of the provisions under the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act, 1989, in this case. It has been urged that dispute, if any, between the parties is purely civil in nature, that is, there exists matrimonial

discord, disharmony and dispute between them. Bringing the provisions under the 1989 act in this case of matrimonial dispute has been controverted on the ground that its application is only malicious, motivated and revengeful.

18. It would be beneficial for the sake of discussion to look to the Statement of Objects and Reasons accompanying the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill, 1989, when it was introduced in Parliament, sets out the circumstances surrounding the enactment of the said Act and points to the evil which the statute sought to remedy. In the Statement of Objects and Reasons it is stated: –

“Despite various measures to improve the socio-economic condition of the Scheduled Castes and Scheduled Tribes, they remain vulnerable. They are denied number of civil rights and are subjected to various offences, indignities, humiliations and harassment. They have, in several incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.

When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Castes persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes

and Scheduled Tribes. A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes, has, therefore, become necessary.”

19. It is therefore clearly evident that the object for which this specific statute was promulgated was to achieve social justice for the downtrodden scheduled castes and tribes, who were subjected to societal injustice being marked as untouchables and being kept isolated from the mainstream of the society. The greater the menace was, so stringent was the provisions and punishments made in the said piece of legislation. Thus the scope and application of the Act of 1989, rests on absolutely exclusive and distinct pedestal, than for redress of any dispute between two individuals or entities, relating to their matrimony. In the case of ***B. Venkateshwaran (supra)***, that relied on by the petitioners, the Hon'ble Apex Court has been stern and firm against any private civil dispute between the parties being converted into a criminal proceedings by wrong application of the provisions of this specific statute.

20. Pertinent to note that though alleging about the petitioners subjecting her with abusive and undermining languages pointing out to her caste, the defacto complainant has not mentioned in the first information report any specific comment, which might have been hurled against her, as alleged. Therefore, though the defacto complainant has several times mentioned about her being targeted for abuse on the ground of her caste, she has left the same to be non-specific one, having not mentioned as to the specific language of

humiliation or abuse in the name of her caste. In absence of any such specific mention, the prima facie ingredient of offence cannot be said to have been laid down in the first information report.

21. Marriage of the parties was not a peaceful one. Opposite party No. 2/wife started living separately from petitioner No. 1/husband and her in-laws. There is no dispute to this fact whereas the reason for the same has been narrated differently by the two parties in their respective first information reports, as mentioned above. Also in this first information report, the opposite party No. 2 has expressed her mind to pursue litigation separately for redress regarding her matrimonial discord. The reason as to why all these are being discussed is that existence of matrimonial dispute and absence of any ingredient of offence as alleged against the petitioners under the provisions of the Act of 1989 is apparent in this case which would render the ratio of the decision in ***B. Venkateshwaran (supra)*** case to apply squarely here in this case. It would amount to be a civil case regarding matrimony of the parties to be converted into a criminal proceeding, that too, under the stringent provisions of the said specific statute. Following the ratio of the said judgment, it is held that such an endeavour is not to be upheld by a Court.

22. At this stage let the relevant provisions of the said Act be extracted for clarity, which are as follows:

3. Punishments for offences of atrocities.—

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

(xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

- 23.** It is worth mentioning that from the four corners of the FIR no material as to insult of the defacto complainant in a place within public view would be evident. There are averments regarding execution of threat to humiliate her openly in the public, but there can be found no specific material that any such action has already been undertaken by the petitioners. The defacto complainant has also alleged of forcefully photographing her in indecent conditions and also circulation of those through the social media channels by the petitioner No.1. A specific query as regards the same was made by this court earlier. The answering forensic report has however clearly depicted about no fruitful result to have yielded from the examination. This fact, emanating from the report dated 10.04.2019, prima facie nullifies wife's claims as such. By alleging the same, the defacto complainant had tried to make out certain ingredient as to the offence under section 3 (1) (xii) of the said Act, but in vain, in view of the report as discussed above. It has already been stated earlier that the

reason as to why the defacto complainant has started living separately is disputed and there are divergent versions available from the respective parties. Accordingly it can also not be stated in unequivocal terms that the present first information report has disclosed any prima facie material as regards the offence under section 3 (1) (xv) of the said Act, against the present petitioners.

24. Since lodging of the criminal proceedings against the petitioners under the other provisions of law, which have been attracted against them, that is, sections 498A, 354D and 34 of the Indian Penal Code, has not been disputed in this case, any question or discussion as to the application of those provisions of law against the present petitioners in this case, has been kept outside the purview of decision making process and decision in this revision.

25. From the discussions as made above, it is clearly and categorically found that in this criminal proceeding the defacto complainant has not been able to bring on record any material, even prima facie, against the petitioners regarding any offence under the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act, 1989. Therefore the allegations made in the first information report have not made out a prosecutable case against the petitioners. According to the settled provision of law therefore, to proceed against the petitioners under the provisions of 1989 Act as stated above, would be an abuse of the process of Court, which is to be prevented in this case by exercising this court's extraordinary power and inherent jurisdiction under section 482 CrPC.

- 26.** Hence, this revision being C.R.R 2082 of 2016 succeeds.
- 27.** The proceeding against the petitioners in Sonarpur Police Station case No.1109 of 2016 dated 16. 05. 2016 (connected GR Case No. 3905 of 2016) is quashed, so far as the alleged offence under section 3 (1) (x), (xii) and (xv) is concerned. However the proceeding in connection with the said first information report under sections 498A, 354D and 34 of the Indian Penal Code shall duly take place in accordance with law. The trial Court henceforth shall treat the FIR, to have been lodged under Sections 498A, 354D and 34 of the Indian Penal Code.
- 28.** Connected application, if any, is also disposed of.
- 29.** Certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

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(Rai Chattopadhyay,J.)