

M/L18
04.09.2023
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C.R.R.2499 of 2023
With
CRAN 1 of 2023

In Re: An application under Section 482 of the Code of Criminal
Procedure, 1973;

Jotswana Hembrom and another
Versus
The State of West Bengal and another

Mr. Monish Sen
Ms. Oisani Mukherjee.
...for the petitioners.

Mr. Saswata Gopal Mukherjee, Ld.P.P.
Mr. Imran Ali
Ms. Debjani Sahu.
...for the State.

Mr. Ali, learned advocate appearing for the State has produced the case diary of Durgapur P.S. Case No.343 of 2020 dated 15.09.2020 as well as Durgapur (Women) P.S. Case No.16 of 2021 dated 30.03.2021. The first of the case was under Sections 498A/323/406/354B/307/467/471/506 of the Indian Penal Code wherein charge-sheet was submitted under Sections 498A/323/406/354/506 of the Indian Penal Code. The complainant in the said case is Tanushri Hembram. The second case was subject matter of quashing which was instituted by one Payel Datta under Sections 448/323/354/354B/376/511 of the Indian Penal Code wherein charge-sheet was submitted under Sections 448/323/354/354B/376/511 of the Indian Penal Code.

Mr. Sen, learned advocate appearing for the petitioners submits that the present petitioners, namely, Jotswana Hembrom

and Tanushri Hembrom have been falsely implicated in connection with the instant case. Additionally, it has been submitted that in the earlier case Payel Datta who had an illicit relationship with the husband of Tanushri Hembrom was implicated as an accused. As a counter blast to the same, the present case was instituted for wrecking vengeance upon Tanushri Hembrom and her relations.

Learned advocate stressed on the issue relating to counter blast by way of which the case without any foundation has been initiated, registered and charge-sheet has been filed. It has also been brought to the notice of this Court that no medical evidence has been adduced in this case and only on the testimony of the present complainant, the case has been established and the other witness who is supporting the prosecution is hearsay witness/evidence.

Learned advocate has further submitted that having regard to the fact that the chances of conviction in the present case being bleak and that the factual circumstances except the statement of the complainant are not supported by attending circumstances, rather the medical evidence in which the case was initiated has an overwhelming effect on the first case, the present proceedings should not be allowed to continue.

I have considered the submissions advanced by Mr. Sen as well as Mr. Ali, learned advocates appearing for the petitioners and that of the State. The following facts emerge from the submission of the learned advocates:

- (1) Tanushri Hembrom happens to be married wife of

Sagun Mandi who initiated the first case under Sections 498A IPC along with other sections which included Payel Datta as an accused.

- (2) Payel Datta by way of counter blast initiated the present case wherein she implicated Tanushri Hembrom along with her brother and sister.
- (3) The case which is a subsequent one although was a counter blast but the facts narrated in the complaint do have overtones of sexual assault the truth relating to which is to be tested by way of cross-examination.

The contents of the complaint itself along with the principles set by the Supreme Court do call for appreciation of the totality of the circumstances along with the principles of appreciation relating to sole testimony of prosecutrix in a case of such nature.

Petitioners at this stage have come for quashing of the proceedings of Durgapur Women Police Station Case No.16 of 2021 dated 30.03.22021.

Having regard to the principles laid down by the Hon'ble Supreme Court to nip the case at this stage when the evidence has just commenced after the framing of the charges, I am of the opinion that the prayer so advanced cannot be interfered with. Accordingly, I am of the considered view that in case the petitioners are able to make out a case for mala fide at the end of the trial after confronting the complainant regarding the falsity of the allegations

or the same being counter blast to the case initially registered pursuant to the complaint of Tanushri Hembrom, the learned trial court would consider the same at the final stages of the present case by way of weighing the probability of the incident having taken place on the date so complained by Payel Datta.

With the aforesaid observations, CRR 2499 of 2023 is disposed of.

Pending application, if any, is consequently disposed of.

Both the case diaries be returned to Mr. Ali, learned advocate appearing for the State.

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

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

(Tirthankar Ghosh, J.)