

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2333 of 2019

Susanta Pal

Vs.

The State of West Bengal & Anr.

For the Petitioner : Ms. Debipriya Mitra,
Ms. Sudakshina Dey.

For the State : Mr. Swapan Banerjee,
Ms. Purnima Ghosh.

For the Opposite Party No. 2 : None.

Heard on : 05.07.2023

Judgment on : 20.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings relating to G.R. Case No. 1167 of 2018 arising out of Udaynarayanpur Police Station Case No. 49 of 2018 dated 19.05.2018 for the offence punishable under Sections 498A/325 of the Indian Penal Code now pending for disposal before the Learned Judicial Magistrate, 1st Class at Amta and all subsequent orders relating thereto.

- 2.** The petitioner's case is that the opposite party no. 2 was married to the petitioner according to Hindu Rites and Customs on 24th day of Baishak 1407 B.S. and the said marriage was a negotiated one. After few days of marriage, the opposite party no. 2 alleged that she was subjected to torture by her husband and lastly on 14.05.2018 at about 13.30 hours the petitioner along with his mother are alleged to have assaulted her with bamboo stick when she came over to stay in her matrimonial house with her two children and to spend conjugal life with her husband and later the opposite party no. 2 lodged a written complaint before the Inspector-in-Charge of Udaynarayanpur Police Station on 19.05.2018.
- 3.** The petitioner states that the opposite party no. 2 in her written complaint ventilated false charge about the petitioner and his family stating that she was not given proper food and was alleged to have been tortured and assaulted in her matrimonial house.
- 4.** That without proper investigation, the investigating officer submitted charge sheet vide No. 58 of 2018 dated 15.07.2018 arising out of Udaynarayanpur P.S. Case No. 49 of 2018 dated 19.05.2018 for the offence punishable under Sections 498A/325 of the Indian Penal Code against the petitioner.
- 5.** The petitioner states that the opposite party no. 2 previously also had roped in the petitioner and his parents on the self same false and frivolous complaint of mental and physical alleged torture on her in her matrimonial home on the same cause of action. The opposite party no. 2 again on the self same cause of action frivolously lodged a FIR before the Jangipara Police Station on 20.07.2013 vide FIR No. 122 of 2013 for the

offence punishable under Sections 498A/406 of the Indian Penal Code disclosing omnibus allegation against the petitioner and his family members.

6. The Investigating Officer curiously enough without conducting the investigation in a procedural manner as per the statutory provisions of Criminal Procedure Code, submitted charge sheet against the petitioner and his parents with respect to Jangipara Police Station on 29.09.2013 vide Charge Sheet No. 171 of 2013 for the offence punishable under Sections 498A/406 of the Indian Penal Code.
7. It is stated that the Learned Judicial Magistrate, 4th Court, Serampore, Hooghly in G.R. Case No. 1302 of 2013 for the offence punishable under Sections 498A/406 of the Indian Penal Code applied his judicial mind and after scanning the evidence properly by his judgment and order dated 15.05.2017 acquitted the petitioner and his parents of the false and frivolous case lodged at the behest of the opposite party no. 2.
8. **Ms. Debipriya Mitra, learned counsel for the petitioner** has submitted that the impugned proceeding is wholly bad in law and same is liable to set aside as the Learned Magistrate without applying his judicial mind took cognizance on the self same cause of action which is totally bad in law and the proceeding is liable to be quashed.
9. A proceeding under similar (alleged) facts under Section 498A/406 IPC was disposed of by the Magistrate on 15.05.2017, acquitting the petitioner and other relatives of the petitioner.

10. Mr. Binay Panda, learned counsel for the State has placed the case diary and submitted that the petitioner is involved with another lady and thus inflicts cruelty upon his wife and children. He also does not pay any maintenance as directed by the Court.

11. The present case has ended in charge-sheet under Section 498A/323 IPC. Other than other materials on record, against the petitioner, page 18, is the injury report in the case diary. It supports the case of the opposite party/wife that she had been assaulted by the petitioner with a bamboo. The injury report dated 14.05.2018 notes the injury as follows:-

- i) Bleeding from right side of scalp.
- ii) Abrasion on the right side of scalp.

12. In the present case the 'cruelty' has prima facie continued upon the defacto complaint even after being acquitted in an earlier case as the mental and physical torture has continued even after the previous case was registered. The present case has been registered on a fresh cause of action, as the parties are still married and prima facie the opposite party no. 2 is still facing 'cruelty'.

13. Though the complainant had filed an earlier case alleging cruelty and it ended in acquittal of the petitioner, but the 'cruelty' by the petitioner allegedly continued. **The injury report prima facie supports the case of the complainant. The cause of action is a fresh one.**

14. Thus there being a prima facie case against the petitioner for the offences alleged, the case should be permitted to proceed towards trial.

- 15. The revisional application being CRR 2333 of 2019 is accordingly dismissed.**
- 16.** No order as to costs.
- 17.** All connected applications, if any, stands disposed of.
- 18.** Interim order, if any, stands vacated.
- 19.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 20.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)