

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2385 of 2021

Soumitra Sarkar

Versus

The State of West Bengal & Anr.

For the Petitioner : Mr. Krishna Das Poddar, Adv.

For the State : Mr. Madhusudan Sur, Adv.
Mr. Manoranjan Mahata, Adv.

Heard on : 18.01.2023

Judgment on : 31.01.2023

Ajay Kumar Gupta, J:

1. This application under Section 482 of the Criminal Procedure Code, 1973 has been filed by the petitioner seeking for quashing of the proceeding of G.R. Case No. 8256 of 2021 in connection with Nimta P.S. Case No. 704 of 2021 dated 17.09.2021 under Section 498A/420/406/34 of the Indian Penal Code pending before the Learned A.C.J.M., Barrackpore.

2. Facts leading to filing of this application are that the marriage between the petitioner and the opposite party no. 2 was solemnized through negotiation on 21st February, 2021. After marriage their marital life was happy for few months. There was no problem from any corner. Both were residing separately in the premises no. 121, Lalit Gupta Street, Nimta Roy Para, a house owned by petitioner's father. But suddenly without any information and reasonable excuse, she left the matrimonial home keeping the house under lock and key. Petitioner had contacted her on several occasions over phone, when he came to know she went to her parents' house, her reply was in negative

to lead conjugal life. She raised question about his potentiality and advised for medical consultation. Accordingly, the petitioner consulted with reputed neurologist for her satisfaction. After advising some tests he was found no infirmity or deficiency on his part but despite of the facts, she was not willing to stay with the petitioner. Accordingly, petitioner filed an application under Section 9 of the Hindu Marriage Act before the Learned Additional District Judge at Barrackpore, North 24- Parganas on 1st day of July, 2021 praying for restitution of conjugal rights. After receiving summon, suddenly she lodged a written complaint against the husband and other in-laws without any cause in Nimta Police Station in resulting Nimta P.S. Case No. 704 of 2021 dated 17.09.2021 under Section 498A/420/406/34 of the Indian Penal Code was registered.

3. Learned counsel appearing on behalf of the petitioner strenuously submitted that after marriage, their marital life was smooth and happy. There was no problem from any corner. Both were residing separately in the premises no. 121, Lalit Gupta Street, Nimta Roy Para, a house owned by petitioner's father. But suddenly without any information and reasonable excuse,

she left the matrimonial home keeping the house under lock and key on 16.04.2021. Petitioner had contacted her on several occasions over phone, when he came to know she went to her parents' house, her reply was in negative to lead conjugal life. All on a sudden 6th May, 2021 the opposite party no. 2 accompanied by her parents had visited the matrimonial home and first time she raised question about his potentiality and advised for medical consultation. Accordingly, the petitioner consulted with reputed neurologist for her satisfaction. After advising some tests he was found no infirmity or deficiency on his part but despite of the facts, she is not willing to stay with the petitioner. The main grievance against the petitioner is not capable of cohabiting with the wife is also turned down by the medical evidence. No allegation made against other co-accused persons and there is no case made out by her. She has maliciously implicated the petitioner as well as other in-laws in the instant case. Accordingly, he rushed before this Court praying for quashing of the said proceeding pending before the learned A.C.J.M., Barrackpore and same is required to be quashed otherwise he will suffer a loss without any fault.

4. Mr. Sur, learned counsel appearing on behalf of the State submitted that the opposite party no. 2 left matrimonial house on 16.04.2021 due to physical and mental torture upon her by the petitioner as well as other in-laws. The F.I.R. has specifically highlighted the offence committed by the petitioner and other in-laws. Accordingly, on the basis of the written complaint, Nimta P.S. Case No. 704 of 2021 under Section 498A/420/406/34 of the Indian Penal Code was registered. It is further submitted that after conclusion of the investigation, a charge sheet has been filed after satisfaction of prima facie case against the petitioner and other in-laws under Section 498A/406/34, I.P.C. Therefore, this case has no merit and required to be dismissed.

5. Having heard the submissions made by the parties and on perusal of the case diary, this Court finds it is an admitted fact that the petitioner and opposite party No.2 are husband and wife and their marriage was negotiated and solemnized on 21st February, 2021. It is further admitted fact that she left matrimonial home on 16.04.2021. The main issue is here that the petitioner is not capable and unable to cohabite with wife and when she disclosed this fact to other in-laws they denied the

allegation. They did not try to find out the actual facts rather they started abusing and torturing her by different manners. Not only that she had also alleged that once occasion the petitioner and in-laws had tried to kill her by left open the pipe of the gas cylinder so that she might caught fire while cooking. She could realise when she smelt the gas emanating from cylinder. Due to such fear, she left the matrimonial home. After carefully perusal of F.I.R, it appears ingredients are sufficient and cognizable as alleged by the complainant. Subsequently, charge sheet has also been submitted against the petitioner and other in-laws after conclusion of investigation under Section 498A/406/34 of I.P.C. Evidence collected during investigation also established prima facie case against the accused persons.

6. The Hon'ble Supreme Court in ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others***¹ has also laid down the several guidelines to be followed by the court while exercising its power under Section 482 of the Cr.P.C./or under Article 226 of the Constitution of India out of those guidelines, few are as follows:-

¹ (2021) SCC Online SC 315

“i) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

ii) Criminal proceedings ought not to be scuttled at the initial stage;

iii) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

iv) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the Court to be more cautious. It casts an onerous and more diligent duty on the Court;

v) While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

vii) When a prayer for quashing the FIR is made by the alleged accused and the Court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission

of a cognizable offence or not. The Court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the Court has to permit the investigating agency/police to investigate the allegations in the FIR;”

7. In the light of above observation and also in view of the aforesaid guidelines laid down by the Apex Court, case of the petitioner is devoid of any merit. Consequently, I do not find any reason to quash the proceeding.

8. C.R.R. 2385 of 2021 is, thus, dismissed

9. No order as to costs.

10. All issues raised by the petitioner are kept open at the time of trial. Any observation made by this Court in the instant case shall not stand in the way while deciding the case by the trial Court by its own logical conclusion.

11. Return the C.D. to an appropriate Authority.
12. Photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)