

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2446 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 praying for quashing of the proceeding of G.R. No.9893 of 2021 in connection with Nimta P.S. Case No. 851 of 2021 dated 07.11.2021 under Sections 186/341/353/354 and 506 of the Indian Penal Code initiated by the I.O. concern of Nimta Police station suo-motu 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 notice 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 first time 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 restitution of conjugal rights. After receiving summon, suddenly she lodged a written complaint against the petitioner and other in-laws without any cause 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. On 6th day of November, 2021 the I.O. concern had intimated over phone to him that streedhan articles should be handover to the opposite party from the matrimonial home as per complaint lodge by the opposite party no.2. Thereafter, petitioner informed over phone to his wife to take delivery of the streedhan articles from the matrimonial home at any time within next 24 hours but she refused to take delivery as such said facts was intimated to the I.O. concern and requested that the articles could be brought at the police station in response I.O. gave her consent accordingly petitioner take all streedhan articles to

the police station but during transit I.O. concern informed over phone to the petitioner she would come to seize the streedhan from his matrimonial home as per the list furnished by her though no such list or copy had been served upon the petitioner. Thereafter the I.O., a lady member along with three male police visited the house of the petitioner and collected streedhan articles including other articles, which was purchased by petitioner from his own money like pressure cooker and other cooking vessels and had been lifted in the name of compliance of Section 406 of the I.P.C though the petitioner had disputed regarding those items which were not streedhan. Upon such objection, the I.O. concern warned him to place him behind the bar if raised any voice. The petitioner was asked to meet in the Police Station after collecting all the articles by the I.O. No misbehaviour or assault or hurling any oblique language used by the petitioner during such recovery. When he reached to the police station he came to know that I.O. has registered Nimta Police Station Case No. 851/2021 dated 07.11.2021 under Sections 186/341/353/354 and 506 of the I.P.C against the petitioner presently pending before the learned A.C.J.M., North 24 Paraganas without any such incident as alleged by the I.O. concern in the said F.I.R. Actually petitioner had submitted a complaint before the said I.O. earlier against her wife but the I.O. concern has refused to accept the same against the wife.

Later the petitioner having no alternative sent the said complaint by post to the higher authority (Superintendent of Police) which makes her embarrassed. Accordingly, I.O. implicated him falsely due to grudge contending therein that the petitioner had misbehaved and assaulted while discharging duties to the police personnel. The petitioner never refused or obstructed in the process of recovery of the streedhan as such he prays for quashing of the said proceeding.

3. Learned counsel appearing on behalf of the petitioner submitted that the proceeding started by the I.O. suo-motu under Sections 186/351/353/354 and 506 of the I.P.C is liable to be quashed because said case was started without any cause and/or any interference by the petitioner in course of recovery of streedhan Articles. Proceeding started at the behest of personal grudge of the I.O concern. The petitioner is innocent and not at all involved in the instant case so the proceeding may be quashed.

4. Mr. Sur, learned counsel appearing on behalf of the State vehemently submitted that the petitioner had committed the offence and disturbed the I.O. as well as force at the time of recovery of

streedhan as per the list given by his wife. He was not only disturbed but he also started altercation with the police personnel especially the lady officer. He also used filthy languages and misbehaved with the police personnel. He also outraged the modesty of the female officer. Accordingly, she lodged a complaint against him which was registered as Nimta P.S. Case No. 851 of 2021 dated 07.11.2021 under Sections 186/351/353/354 and 506 of the I.P.C. and the said case was investigated and after completion of investigation, a charge sheet has been submitted under Section 341/354/506 of the Indian Penal Code against the petitioner. So the case filed by the petitioner should be dismissed as the case has no merit.

5. Having heard the submission of the parties and on perusal of the certified copy of the C.D. submitted by the State it reveals a suo motu complaint was lodged by the LSI Baruna Mondal of Nimta Police Station to the effect that in between 13.15 hrs and 14.45 hrs on 07.11.2021 officer along with force being accompanied by the complainant namely Smt. Uma Sarkar (Pal) had been to the house of petitioner in connection with Nimta P.S. Case No. 704/2021 dated 17.09.2021 under Section 498A/420/406/34 I.P.C, the petitioner started a hot altercation with them in course of recovery of streedhan

articles. He directly resisted Police personnel using slang and filthy languages and also misbehaved with them. He did not co-operate with them and also pushed the officer towards the wall with intend to outrage of female modesty. Finding no other alternative and to maintain the law and order situation and peace and tranquillity in the area, officer arrested him maintaining all legal formalities and guidelines after initiation of Nimata Police Case No. 851 of 2021 dated 07.11.2021 under Sections 186/351/353/354 and 506 of the I.P.C. During investigation of this case, the I.O of this case also found prima facie case against the present petitioner. Accordingly, a charge sheet has been filed against the petitioner. Furthermore this Court finds the suo-motu complaint lodged by the LSI against the petitioner discloses the ingredients of the alleged offences and also it is cognizable.

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 under:-

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 aforesaid discussion and also in view of the 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. 2446 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.)