

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. – 2809 OF 2018

Smt. Chandana Saha

Vs.

State of West Bengal & Anr.

with

CRR 2812 OF 2018

+

IA No. CRAN 1 of 2019

(Old No. CRAN 3877 of 2019)

Debasish Chandra Roy

Vs.

State of West Bengal & Anr.

with

CRR 2813 OF 2018

Subhasish Chandra Roy

Vs.

State of West Bengal & Anr.

with

CRR 2814 OF 2018

Mina Roy

Vs.

State of West Bengal & Anr.

with

CRR 2815 OF 2018

Smt. Bandana Dey

Vs.

State of West Bengal & Anr.

For the petitioner : Mr. Partha Chakraborty, Adv.,

Mr. Archishman Chakraborty, Adv.

For the State : Mr. Saswata Gopal Mukherjee, Adv.,

Mr. Binay Panda, Adv.,

Mr. Subham Bhakat, Adv.,

[In CRR 2809 of 2018]

Mr. Swapan Banerjee, Adv.,

Ms. Purnima Ghosh, Adv.

[In CRR 2812 of 2018 & CRR 2815 of 2018]

For the opposite Parties :

Mr. Sambhunath De, Adv.,

Mr. Ranjit Kumar Ghosh. Adv.

Judgment on

:

04.01.2023

Subhendu Samanta, J.

The present criminal revisions were preferred by the husband and in-laws of private OP No-2 for quashing of a criminal proceeding vide Garfa P.S case no.- 222 dated 17.07.2017 U/s 498(A)/406/34 of IPC and section 4 of Dowry Prohibition Act 1961 now pending before the Learned Additional Chief Judicial Magistrate Alipore, South 24 Parganas.

The husband and the in-laws were arrayed as an accused in a letter of complaint dated 16.07.2017 lodged by the opposite party No. 2 addressed O.C. Garfa Police Station South 24 Parganas under the above mentioned provisions of law for which the police case was started.

The investigation of the police was ended in charge sheet vide C.S. No. 170 of 2017 dated 25.09.2017 U/s 498(A)/406/34 IPC against all the accused persons.

In a nutshell, the brief fact of petitioner is that – on bare perusal of the letter of complaint it would be revealed that it is an afterthought, imaginary, baseless, false and frivolous allegation has been levelled against the petitioners. The statement of the petition of complaint are contradictory from each other and it does not reflect in a prima facie materials of physical and mental torture upon her. The petitioners have been falsely implicated in

this case and were not at all involved in the alleged occurrence. The statement in the complaint regarding the involvement of the present petitioner is practically imaginary and harrasive one. It is the further case of the petitioner the long hand written complaint stated several occurrences which actually not happened and it is only filed to harass the present petitioner. It is the further case of the petitioner that the investigation conducted by the investigating agency without any proper and fair investigation dragged the present petitioner in the instant criminal case. No sufficient materials has been collected by the investigating agency during the course of investigation of this case. The statement so far as collected by the I.O. are the statement of father and mother of the de facto complainant. No other statement of independent witnesses were collected. On the basis of collected materials the prima facie case against the present petitioner actually was not substantiated. Thus the continuation of the criminal proceeding is bad in the eye of law.

Learned Advocate appearing on behalf of the state submitted that after receiving the petition of complaint of the married lady (OP No. 2) the police took up the investigation conducted search, made seizure some stridhan articles were seized from the possession of the accused person. Statement available as witnesses were recorded and after being satisfying regarding the prima facie involvement of the present petitioner in the alleged offence, the charge sheet has been submitted.

Learned Advocate for the State further pointed out that the materials so collected by the I.O. during the course of investigation of this case cannot be weighted at this stage. So, he prayed for dismissal of the criminal revision.

Learned Advocate appearing on behalf of the petitioner cited several decisions in support of his contention there **Wasim Vs. State (NCT of Delhi) [(2019) 7 SCC 435]**, **Shafiya Khan Vs. State of Uttar Pradesh [(2022) 4 SCC 549]**, **Durshi Chand Agarwal vs. State of West Bengal [2011(2) CHN**

(CAL)1011] and State of Hariyana & Ors. Vs. Ch. Bhajanlal & Ors. [AIR 1992 Supreme Court 604]

In **Wasim vs. State (NCT of Delhi)** Hon'ble Supreme Court has held in para- 12 that

12. Conviction under section 498-A IPC is subjecting a woman to cruelty. Cruelty is explained as any wilful conduct which is likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health. Harassment of a woman by unlawful demand of dowry also partakes the character of "cruelty". It is clear from a plain reading of Section 498-A that conviction for an offence under Section 498-A IPC can be for wilful conduct which is likely to drive a woman to commit suicide OR for dowry demand. Having held that there is no evidence of dowry demand, the trial court convicted the appellant under Section 498-A IPC for his wilful conduct which drove the deceased to commit suicide. The appellant was also convicted under Section 306 IPC as the trial court found him to have abetted the suicide by the deceased.

In this cited reference the Hon'ble Supreme Court is of clear view that the prosecution has failed to prove mental or physical cruelty so inflicted upon the victim thus, Hon'ble Supreme Court is of final observation that conviction U/s 498A cannot be sustained.

Hon'ble Supreme Court in **State of Hariyana and Ors. Vs. Ch. Bhajanlal and Ors.** Has formulated some comments regarding the quashing of FIR. Para 91 of the said judgment is read as follows-

Gajendragadkar, J. Speaking for the Court while considering the inherent powers of the High Court in quashing the First Information Report under Section 561-A of the old Code (corresponding to Section 482 of the new Code) in R.B. Kapur v. The State of Punjab (cited above (1960) 3 SCR 338: (AIR 1960 SC 866 at p. 869) at page 393 made the following observation :

“ Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First information Report to decide whether the offence alleged is disclosed or not. In such cases, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accuse person.”

Paragraph 107 and 108 of the said judgment has also fixed some guiding principles regarding the quashing of FIR.

107. Mr. Parasaran, according to whom the allegations in the present case do not make out an offence, drew our attention to a recent judgment of this Court in State of U.P. vs. V.R.K. Srivastava (1989) 4 SCC 59 : (AIR 1989 SC 2222) to which one of us (S. Ratnavel Pandian, J.) was party. In that case, it has

been ruled that if the allegations made in the FIR, taken on the face value and accepted in their entirety, do not constitute an offence, the criminal proceedings instituted on the basis of such FIR should be quashed. The principle laid down in this case does not depart from the proposition of law consistently propounded in a line of decisions of this Court and on the other hand it reiterates the principle that the court can exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the FIR, do not constitute an offence and that it depends upon the facts and circumstances of each particular case.

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list or myriad kinds of

cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

*3. Where the uncontroverted allegations made in the **FIR** or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

4. Where, the allegations in the F.I.R do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R or complaint are so absurd and inherently improbable on the basis of which no prudent

person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and / or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

7. *Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

Hon'ble Supreme Court in *Shafiya Khan in the State of Uttar Pradesh* also followed the same principle in *Bhajanlal Case*.

In Paragraph 15 of **Durshi Chand Agarwal Vs. State of West Bengal** this court has held that

15. *In the general election to the legislative assembly of the State of Haryana in June 1987, Smt. Jasma Devi, the wife, of Ch. Bhajan Lal contested from Adampur constituency on being sponsored by the Congress (I) party as against the second respondent, Mr. Dharam Pal who was a nominee of the Look Dal. Mrs. Jasma Devi was successfully elected. Dharam Pal presented an*

election petition calling in question the election of Smt. Jasma Devi on a variety of grounds. Ch. Devi Lal, the third respondent in this appeal who was the second respondent in the writ petition also contested on Lok Dal's ticket and became successful. Thereafter, Ch. Devi Lal became the Chief Minister of the State of Haryana in 1987.

It seems that after the general election there were a number of criminal proceedings between the parties one of which being a criminal prosecution against Dharam Pal under Section 307, IPC registered in Adampur police station. On account of the political rivalry and the institution of a number of criminal cases and counter cases there was bad blood between Ch. Bhajan Lal on the one hand and Ch. Devi Lal on the other.

The facts and circumstances of the case mentioned in the Durshi Chand Agarwal is separate to the facts and circumstances of the instant case thus this principle is not at all applicable.

Heard Learned Advocate perused the materials on record also perused the principles laid down in the Bhajanlal case.

In **Mahavir Vs. State (2000) 8 SCC 115** Hon'ble Supreme Court is of view that *"power of quashing criminal proceeding should be exercised sparingly and with circumspection and that too of rarest of rare cases"*.

In the case of Bhajanlal it is formulated that the allegations in the FIR of the complaint even if, they are taken on their face value and accepted entirety do not constitute the offence alleged, in such cases no question of appreciating evidences arises, it is a matter merely of looking at the

complaint or the FIR to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate in the High Court to hold that it would be manifestly unjust to allow the process of the Criminal Court to be issued against the accused persons.

Let me consider whether principles laid down in the Bhajanlal's case is applicable in the case.

In the present case it appears that there is a long hand petition of complaint written by the complainant herself. It contents some instances and allegations of torture committed by the accused persons. Some allegations is of such a nature as is likely to causes grave injury or torture to life, or limb or health of the complainant. The complaint also mentioned day to day affairs; it disclosed the allegation of mental torture inflicted upon the de facto complainant by the petitioners. On receiving the complaint police registered a criminal case and started investigation. During the course of investigation some stridhan articles were seized from the possession of the petitioners. The statement of mother and father of the de facto complainant was recorded. Now the petitioners are before this court with a specific plea that the statement of the petition of complaint is false and contradictory to each other. At this juncture the fact disclosed in the complaint cannot be accepted to be false without examination of the de facto complainant at trial. Further more the facts in the complaint is not appears to me self contradictory. During the course of investigation, police should have collected some evidence of independent witnesses but they have failed to do so. The failure of the investigating agency to collect proper evidence itself cannot disprove the facts in the complaint. This is a very initial stage of this case where the charge sheet has been submitted after completion of investigation. At this juncture I find no justification to hold that allegation made in the FIR is not constitute an offence. Whether the prosecution would be able to prove the case at trial is the matter and future probabilities. In the criminal jurisdiction the High Court has no power to measure the probative value of evidences collected by the investigating agency by holding mini-trial.

The facts and circumstances of this case suggests the principle for quashing FIR as laid down in the Bhajan Lal's case is not at all applicable.

I find the allegation made in the FIR are not so absurd by which it can be presumed that no prima facie case has been made out. The petitioner also failed to establish any particular circumstances for which it can be hold that the criminal proceeding is instituted with an ulterior motive for wrecking vengeance on the accused.

Thus after considering the facts and circumstances of this case and also considering the entire materials on record I am of a view that the criminal proceeding pending against the present petitioners before the Learned Magistrate is not liable to be quashed.

In conclusion, criminal revisional applications are dismissed.

Pending connected CRAN applications if any, are also disposed of.

Any order of stay passed by this court during the continuation of the revisional applications are also vacated.

CRRs are disposed of.

(Subhendu Samanta, J.)