

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.R. 2198 of 2014
With
CRAN 4 of 2023
Syed Md. Jawaid Nehal and Ors.
-Vs-
The State of West Bengal & Anr.**

For the Petitioners : Ms. Chandrani Bhattacharya

For the O.P. No. 2 : Mr. Kamalesh Jha

For the State : Mr. Angshuman Chakraborty

Heard on : 23.06.2023, 01.12.2023.

Judgment on : 04.12.2023.

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been preferred to quash the impugned proceeding being No. C.R. No. 384 of 2013 pending before the Learned Judicial Magistrate, 2nd Court, Jangipur, Murshidabad under Sections 380/354/323/324/429/506/34 of the Indian Penal Code.
2. The petitioner Nos. 1 to 3 are the residents of the State of Jharkhand and the petitioners nos. 4 to 6 are the residents of Howrah District.
3. The Compromise application filed by the both the parties stated as follows:-
 - i. The Complaint Case No. C.R. No. 384 of 2013, under Sections 380/354/323/324/427/506/34 pending before the Learned Judicial Magistrate, 2nd Court, Jangipur, Murshidabad was

registered against the petitioners namely – (i) Syed Md. Jawaaid Nehal, (ii) Mrs. Farzana, (iii) Noorjahan, (iv) Syed Md. Nabi Hussain (Deceased), (v) Anawar Ali, (vi) Sofia Anwar, on the complaint of the respondent no. 2 namely Abdul Mustaq Ahmed. The said Complaint Case C.R. No. 384 of 2013 is still pending for disposal.

- ii. The efforts and attempts were made by the friends and elders as well as the respectable people of the society thereby clarifying all the bona fide mistakes, misunderstandings between the parties. The opposite party no. 2 has thus agreed to compromise with the petitioners and has decided not to proceed with the pending case.
- iii. All the disputes between the parties herein stands finally resolved and there is no ill or complaint against each other in any manner. The parties have thus decided to take out the present application for compromise and it is expedient in the interest of justice that the application for quashing be allowed by the Hon'ble Court.
- iv. It was pertinent to mention that divorce was already granted as per Muslim Divorce by wife, in favour of Kauser Perween @ Parveen, on 30.09.2020 against Abul Khayer Ahmed and the proceedings under Section 498A filed against Abul Khayer Ahmed had been dismissed.
- v. The parties herein have agreed not to proceed with any case in future against each other in view of the compromise entered into between them except a maintenance case, Misc. No. 110 of 2013 in the Learned Court of Additional Principal Judge, Singhbhum at Jamshedpur.

- vi. The petitioners and the opposite party no.2 submits that if orders as prayed for herein is passed it shall afford complete and proper justice to them.
4. One Kauser Parveen, the sister of the petitioner no. 1 got married to the younger brother of the opposite party no. 2 namely Abul Khayer Ahmed.
5. The petitioner no. 1 is the brother, petitioner no. 2 is the mother, petitioner no. 3 is the father, petitioner nos. 4 and 5 are the married sisters and petitioner no. 6 is the brother-in-law of the aforesaid Kauser Parveen Ahmed.
6. At the instance of the opposite party no. 2 the instant case was filed before the Learned Additional Chief Judicial Magistrate, Jangipur under 200 of the Code of Criminal Procedure for issuing process against the petitioners under Sections 380/354/323/324/429/506/34 of the Indian Penal Code.
7. The allegations against the petitioners in the said petition under Section 200 are as follows:
- a) On 23.06.2013 at about 5.30 pm the petitioners came to the house of the opposite party no. 2 at Dhulian, Murshidabad to resolve the matrimonial dispute between Abul Khayer Ahmed, the younger brother of the opposite party no. 2 and Kauser Parveen Ahmed, the sister of the petitioner no. 1.
 - b) During such discussions difference of opinion occasioned and petitioner nos. 1 and 2 insulted the brother of the opposite party no.2 hurling abusive languages.
 - c) The father of the opposite party no. 2 in order to ameliorate the situated pleaded the brother of the opposite party no. 2 to leave the

room. Petitioner no. 2 and 5 blocked the door and prevented him from leaving the room. On, protest, the petitioner no.1 assaulted the father of opposite party no.2

- d) The mother of the opposite party no. 2 tried to free the father of the opposite party no. 2 but the petitioner no. 1 pushed her hard on the chest and she fell down on her back on the floor about 3 feet away. He also assaulted the mother of the opposite party no. 2 intending to outrage her modesty by pulling her Saree.
- e) The petitioner no. 3 and 6 assaulted the father of the opposite party no. 2 with slap and blows and the petitioner no. 1 suddenly took a knife from the dining table and attacked the father of the opposite party no. 2 with it. The opposite party no. 2 and his brother intervened to protect their father and got injured. The brother of the opposite party no. 2 sustained injury on his left arm from the knife held by the petitioner no. 1, while the petitioner no. 6 assaulted the opposite party no. 2 by fists and blows and pulled tore his shirt.
- f) The petitioner no. 4 threw the Colour T.V. from table top to floor and snatched the keys from Saree knot of the mother of the opposite party no. 2 and opened the Almirah and the petitioner no. 4 and 5 ransacked the Almirah and took away cash money amounting to Rs. 25,000/- with a Gold chain of 10 gms, a Gold necklace of about 28 gms, and 2 (two) sets of earring of about 7 gms. (Gold armaments amounting to approximately Rs. 1,20,000/-). Petitioner no. 4 and others tried to resist them but failed.

g) Consequently, the opposite party no. 2 and witness no. 1, 2 and 3 got injured with trauma and pain all over the body and were treated. The mother of the opposite party no. 2 was admitted with severe back pain at nearby “Dhulian Nurshing Home” for requisite treatment. The injured left hand of the brother of the opposite party no. 2 had to be bandaged. Both the father of the opposite party no. 2 and the opposite party no. 2 had to take medicines.

h) It took time to recover from the trauma and to provide medical treatment to ailing parents and brother of the opposite party no. 2 reported the incident to the local Police Station – Samshergunj, and requested to institute First Information Report against the perpetrators but the local police simply registered a G.D.E. being no. 1167 of dated 25.06.2013.

8. The instant proceeding was filed on 01.07.2013 and on the same day cognizance was taken and subsequently the case record of the instant proceeding was transferred from the Court of Learned Additional Chief Judicial Magistrate, Jangipur to the Learned Judicial Magistrate, 2nd Court, Jangipur for enquiry and disposal.

9. On 09.09.2013 the Learned Judicial Magistrate, 2nd Court, Jangipur examined the complainant and opined that the Complainant/Opposite Party no. 2 has succeeded to establish his case against the accused person/the petitioners prima facie under Sections 380/354/323/324/427/506/34 of the Indian Penal Code and issued summons to the petitioners.

10. Learned Advocate for the petitioner submitted that at the instance of the said Kauser Parveen, a complaint case was filed being Complaint Case No. 1280 of 2013 before the Learned Chief Judicial Magistrate at Jamshedpur and pursuant to the subsequent direction of the Learned Court below, Telco Police Station Case No. 248 of 2013 dated 17.06.2013 under Sections 498A/406/420/120B/506 of the Indian Penal Code was initiated against the opposite party no. 2, Abul Khayer, Dr. Mansoor Ahmad and Mrs. Sufia Ahmed.
11. It was further submitted that the opposite party no. 2 and the witnesses namely Dr. Abdul Mansur Ahmed and Mrs. Sufia Ahmed preferred an application under Section 438 of the Code of Criminal Procedure before the Principal Sessions Judge, Jamshedpur being A.B.P. No. 753 of 2013 and Abdul Khayer Ahmed preferred a separate application under Section 438 of the Code of Criminal Procedure before the Principal Sessions Judge, Jamshedpur being A.B.P. No. 773 of 2013 in connection with the Telco Police Station Case no. 248 of 2013 dated 17.06.2013 under Sections 498A/406/420/120B/506 of the Indian Penal Code.
12. The above two applications for anticipatory bail were disposed of by the Learned Principal Sessions Judge, Jamshedpur by an order dated 23.07.2013 whereby the prayer in A.B.P No. 753 of 2013 was allowed and the prayer for anticipatory bail of Abdul Khayer Ahmed was rejected.
13. It was further submitted that when it came to the knowledge of the opposite party no. 2 that at the instance of Mrs. Kauser Parveen a case was filed against him and his family member, the opposite party no. 2 filed this

instant case in order to harass the petitioners which is an example of malicious prosecution.

14. After a passage of years the parties resolved their disputes amicably between each other and filed an application of joint compromise under Section 320(6) of the Code of Criminal Procedure, 1973 read with Section 482 of the Code of Criminal Procedure being CRAN 4 of 2023. It has been contended by both the parties that the misunderstanding and miscommunication generated between them have been resolved within time and intervention of friends and well-wishers.
15. The offences under Sections 380/354/324 are non-compoundable in nature and accordingly the provisions of Section 320 of the Code of Criminal Procedure cannot be invoked. The compromise petition filed by the applicants being CRAN 4 of 2023 is rejected.
16. However, the complaint filed by the petitioners claiming to have been falsely implicated by the opposite party cannot be ruled out in view of the allegations. It is evident from the case record that the provisions of Section 202 of the Code of Criminal Procedure has not been adhered to by the Learned Judicial Magistrate, 2nd Court, Jangipur, Murshidabad.
17. There has been a matrimonial dispute between the parties provoking either of the parties to file criminal case against each other and the members of the respective families. The allegations are general and omnibus in nature.
18. In ***State of Haryana and Others v. Bhajan Lal and Others***¹, the Hon'ble Supreme Court held as under :

¹ 1992 SCC (Cri) 426

“102. 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 of 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 FIR 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 FIR 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 FIR 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.”

19. The proceedings if allowed to continue will result in abuse of process of law in the event that the complaint has been filed to wreak vengeance and subserve malicious intention. Apart from vague allegations, there is nothing on record to justify the trial to proceed, which otherwise would result in abuse of process of law.

20. In view of the above discussions, the impugned proceeding being No. C.R. No. 384 of 2013 pending before the Learned Judicial Magistrate, 2nd Court, Jangipur, Murshidabad under Sections 380/354/323/342/429/506/34 of the Indian Penal Code is quashed.

21. Under such circumstances, the instant criminal revisional application being No. 2198 of 2014 is allowed.

22. Accordingly, CRR 2198 of 2014 along with CRAN 4 of 2023 stand disposed of.

23. There is no order as to cost.

24. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

25. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)