

CRR 3313 of 2005

In the matter of : Raj Kumar Ghosh & Anr.

Mr. Jayanta Narayan Chatterjee
Ms. Pritha Sinha
Ms. Dipannita Das ... for the petitioners.

Mr. B.K. Ray
Ms. Rita Dutta ... for the State

This criminal revision challenges the judgement and order passed by the learned Additional Sessions Judge, Fast Track Court-II, Sealdah in Criminal Appeal No. 35/04 thereby affirming the judgement and order of conviction passed by the learned Judicial Magistrate, 1st Court, Sealdah convicting the petitioners for committing offence under Sections 498A/34 of the Indian Penal Code and thereby sentencing them to suffer rigorous imprisonment for two years and six months and to pay a fine of Rs.500/- each, in default clause.

Mr. Chatterjee, learned counsel appearing on behalf of the petitioners submits that petitioner no. 1 Raj Kumar Ghosh has been unheard of for quite sometimes and he is seeking appropriate order on behalf of the petitioner no. 2 Smt. Rani Mukherjee. It is contended by Mr. Chatterjee, that Archana Ghosh, the de facto complainant / victim is legally married wife of Raj Kumar Ghosh. Their marriage were solemnized on 1st May, 1988. On 10th May, 1995 Raj Kumar Ghosh, the husband filed a suit for dissolution of marriage and on 20.6.1995 Archana Ghosh set the criminal administration of justice into motion by informing the

concerned authority about her plight being treated with cruelty in her matrimonial home by her husband, mother-in-law and married sister-in-law. According to Mr. Chatterjee, it is nothing but a counter blast to the proceeding for divorce.

I have perused the judgement passed by the learned Additional Sessions Judge, Fast Track Court-II, Sealdah in Criminal Appeal No. 35/04 affirming the judgement passed by the learned Judicial Magistrate, 1st Court, Sealdah. In order to prove the ingredients of the offence within the meaning of Section 498A of the Indian Penal Code, the prosecution relied upon some letters purportedly written by the victim to her brother and father disclosing her plight being tortured in her matrimonial home by her husband and other inmates over the demand of money. But from the judgement of the learned Trial Court, I find that photocopies of the letters were admitted into evidence and marked as exhibits 2,3,4,5,5A, 6 and 6A. The letters were claimed to have been written by the victim to her father and elder brother. There is no explanation why the originals could not be produced before the Court. This fact, if considered from the point of view of human probability, it really becomes difficult to swallow that a lady after writing the letter and before sending it by post kept photocopy of the same to be used in future. That apart, in order to admit document as secondary evidence, the provision of Section 65 of the Evidence Act is required to be followed. In this case learned Trial Court did not follow the provision of Section 65 of the Evidence Act. Section 63 of the Evidence Act has also not been adhered to.

Under such circumstances, I am constrained to hold that the impugned judgement was passed relying upon the evidence which is not admissible in law. Therefore, the impugned judgement, should not be allowed to remain in force and should be set aside which I accordingly do.

With this observation, the revisional application is disposed of along with application, if any.

Let a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)