

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

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

CRR 3347 of 2018

With

IA No. CRAN 3 of 2019

(Old No. CRAN 4432 of 2019)

Sri Kaushik Roy

Vs.

The State of West Bengal & Anr.

For the petitioner	:	Mr. Atis Kumar Biswas, Mr. Soumyajit Bhatta, Mr. Zahid Ali Khan, Mr. Amit Singh, Ms. Jyoti Agarwal
For the opposite party	:	Mr. Jayanta Narayan Chatterjee, Ms. Moumita Pandit, Ms. Punita Sinha,
For the State	:	Mr. Narayan Prasad Agarwala, Mr. Pratick Bose,
Judgment on	:	16-03-2023

Subhendu Samanta, J.

This is an application under Section 401 read with Section 482 of the Criminal Procedure Code for quashing of a criminal proceeding being, Baguiati P. S. Case No.05 of 2018 dated 3.1.2018 correspondening to G.R. 54 of 2018 wherein charge-sheet has been submitted under Sections 498A/406/34 of the Indian Penal Code.

The brief facts of the case is that the marriage between the present petitioner and the opposite party no.2 was solemnised on 18.7.2014 according to Hindu Rites and Customs. Their marriage was duly consummated and out of wedlock between the parties one male child was born. The matrimonial disputes cropped up between them. The opposite party no.2 is a school teacher who started residing at her father's house which is nearer to her school. The petitioner had a job at abroad and he left India in the middle of 2016 and returned to India in the year 2018. After returning he found different criminal proceeding was initiated against him and his parents by the present opposite party no.2. It is further fact of the petitioner that the opposite party no.2 started residing separately since the year 2015 and after three years he lodged the instant complaint with the concerned police station with some vague and frivolous allegations. It is the argument of the present petitioner that from the plain reading of the FIR, it would be revealed that the present petitioner was residing at her father's house since her pregnancy period according to the advice of the Doctor. The allegation of torture was never properly stated in the complaint and the allegation of illegal and forceful detention of the Streedhan articles by the present petitioner was also not substantiated. The specific date when the Streedhan articles were demanded by the wife and not returned by the petitioner was also not mentioned.

It is the further argument of the petitioner that the police has conducted investigation of this case in a slip shod manner. The police could not find any materials against the present petitioner but they have submitted charge-sheet. During the course of investigation, all the Streedhan articles

were seized by the police authority and it was given in Zimma to the opposite party no.2. He further pointed out that learned Magistrate without going through the police report and though there is no prima facie case made out against the present petitioner taken the cognizance of the offence and issued the process. Hence this revisional application.

Learned advocate for the State submits that the investigation of the police ended in charge-sheet. During the course of investigation police has seized Streedhan articles from the house of the petitioner and handed them over to the opposite party no.2 as Zimmadar. Police has also collected the evidences including the statement of available witnesses on the basis of which the charge-sheet has been submitted. This is the initial stage of criminal proceeding at this juncture, the criminal case cannot be quashed.

Heard the learned advocate; perused the materials on record also perused the documents filed by the petitioner along with the petition. Perused the case diary and the Memo of Evidences submitted by the Investigating Agency. On perusal of the instant FIR, it appears that the opposite party no.2 has filed this FIR with the I.C., Baguiati P.S. on 3.4.2018, the FIR stated about torture of present petitioner and his parents upon the de facto complainant both physically and mentally. It has been also alleged that she was denied medical assistance during pregnancy as per her Doctor's advice and also as per their mutual consent she started to reside at her father's house.

Truly, the allegation of physical and mental torture is not specified in the petition of complaint. She was admittedly not driven out from her matrimonial home.

It is also admitted that she was residing at her father's house on mutual consent. On the basis of such allegation the police conducted investigation and during the course of investigation the statement of mother, father and the uncle of the de facto complainant was recorded under Section 161 of the Code of Criminal Procedure. The allegation of physical and mental torture in the statement of available witnesses are general and also omnibus in nature.

No medical document was collected by the police during the course of investigation regarding alleged torture so inflicted upon the de facto complainant at her matrimonial home. Let me consider whether on the basis of the attending facts and circumstances, the allegation under Section 498A has been made out or not.

Section 498A of IPC read as follows:

"498A. Husband or relative of husband of a woman subjecting her to cruelty-whoever, begin the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation- For the purpose of this section, 'cruelty' means-

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health(whether mental or physical) of the woman; or*
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet demand."*

The definition of cruelty has specifically pointed out in Section 498A itself. The ingredients of cruelty as described under Section 498A IPC is not actually attributed in this case. There is no allegation of demand of dowry in this case; no substantial evidence has been collected by the police regarding harassment allegedly inflicted by the in laws is of such nature which can drive the married woman to commit suicide.

Considering the facts and circumstances, I am of the view the offence punishable under Section 498A IPC is not at all prima facie made out against the present petitioner.

The Section 406 IPC described a punishment for criminal breach of trust. The criminal breach of trust is defined under Section 405 of IPC as follows:

“405. Criminal breach of trust.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits ‘criminal breach of trust’.”

To made out an offence under Section 406 IPC there are certain ingredients there:

A. Mens rea from the inception.

- B. The accused was entrusted with the property or domain over it.
- C. There must be mis-appropriation or conversion to one own's use for violation of a legal direction or of any legal contract.
- D. Accused dishonestly misappropriate or dispose of that property.

In this particular case it has been alleged by the de facto complainant that her Streedhan articles have been illegal and forcefully held by the present petitioner and other in laws and they are not returning the same as and when asked by her. The allegation does not mentioned any particular date or even when she demanded the return of her Streedhan articles and when it was denied by the accused persons to return the same.

This is the fact of this case that during the marriage the present petitioner has gifted some articles, which she kept at her matrimonial house where she actually resides just after marriage. Consequently, the articles were kept at her in law's house under the guidance of herself as well as her in laws. Subsequently, the matrimonial relation became worse and she left her matrimonial home. No specific allegation was made in this case that any particular Streedhan articles was mis-appropriated by any of the in laws or petitioner at any point of time. The basic ideo for the offence enumerated under Section 406 IPC is the mens rea from its inception. It cannot be said that from the initial stage of marriage the present petitioner or in laws of the de facto complainant had any intention to retain those Streedhan articles with them. More over in this case, the de facto complainant actually initiate the instant proceeding to recover her Streedhan articles.

During the course of investigation police has recovered huge Streedhan articles and it was kept in Zimma with the de facto complainant. Thus, it

appears that the purpose of the petitioner to initiate the criminal case has materialised.

The ingredients of the offence punishable under Section 406 IPC also appears to be not at all made out in this case against the present petitioner.

Hon'ble Supreme Court in State of *Haryana Vs. Bhajan Lal* (AIR 1992 SC 604) has formulated some guidelines wherein the High Court can exercise its inherent power to quash a criminal proceeding. In paragraph 108 of the same citation it has been enumerated that 108(1).

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

In considering the same, it appears that if the allegation in the FIR in this particular case if taken to be true, and also if the evidence collected by the police during the course of investigation is not at all altered during the trial; the offence against the present petitioner under Section 498A/406 IPC cannot be proved beyond reasonable doubt. The instant criminal proceeding pending before the learned Court below if allowed to be continued, it would either abuse the process of the Court or otherwise the ends of justice would be frustrated.

Considering the entire circumstances and the considering the materials on record, I find there are merit to entertain the instant criminal revisional application. This is a fit case wherein inherent power of the high can be exercise to quash the criminal proceeding.

In result thereof, the criminal revisional application is allowed. The

criminal proceeding being Baguiati P.S. Case No.05 of 2018 dated 3.1.2018 corresponding to G.R. 54 of 2018 under Section 498A/406/34 IPC pending before the learned Chief Judicial Magistrate, Barrackpore and connected proceeding if any is hereby quashed.

Accordingly, CRR 3347 of 2018 is disposed of.

Connected pending CRAN application, if any, is consequently disposed of.

Any order of stay passed by this Court during the pendency of the instant criminal application is hereby also vacated.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Subhendu Samanta, J.)