

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

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

C.R.R. No. – 3357 of 2018

With

IA No. CRAN 1 of 2019 (Old No. CRAN 854 of 2019)

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CRAN 2 of 2019 (Old No. CRAN 2639 of 2019)

IN THE MATTER OF

Sk. Rajab Ali.

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Subhasish Pachhal Adv.

**For the OP 2 to 8 : Mr. Ramashis Mukherjee Adv.,
Mr. Rameswar Sinha Adv.,**

**For the State : Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Imran Ali, Adv.,
Ms. Debjani Sahu Adv.**

Judgment on : 01.12.2023

Subhendu Samanta, J.

This is an application u/s 401 read with Section 482 of the Code of Criminal Procedure against an order dated 5th of September 2018, passed by the Learned Judicial Magistrate 6th court Howrah in GR Case No. 6974 of 2012 arising out of Domjur Police Station Case No. 775 of 2012 dated 10.10.2012

u/s 498A/406/506 of IPC and Section 3 and 4 of Dowry Prohibition Act.

The brief fact of the case is that the daughter of the present petitioner namely one Rabia Begam got married with the opposite party No. 2 as per Muslim Rites and Customs on 7th December 2010. It has been alleged that the Opposite Party No. 2 i.e the husband and relatives of the husband inflicted torture upon Rabia Begam at her matrimonial home for the demand of dowry. After 06 months of marriage Rabia Begam became pregnant and again it has been alleged that there was a severe torture on demand of further dowry upon Rabia at her matrimonial home. She could not bear the torture and left her matrimonial home on 05.09.2012 and started residing with the house of the petitioner. Rabia lodged a complaint against the present private opposite Parties with the Domjur Police Station on 10.10.2012 on the basis of which the instant GR Case (Domjur PS Case No. 725 of 2012) was initiated during the staying at her parents' house Rabia experienced severe pain at her abdomen and she was admitted Kulal Rural Hospital on 26.10.2012. At the said hospital she was operated and unfortunately during operation she succumbed though a female baby could be removed alive from the womb. The petitioner being the father reported the matter to Domjur Police

Station but the police did not take any step to investigate the matter properly. The investigation of the case was proceeded and in the mean time the petitioner filed an application praying for adding Section 313 and Section 304 B of IPC in connection with the said Domjur Police Station Case No. 775 of 2012.

Learned Judicial Magistrate Howrah upon hearing the said application has rejected the same. Challenging the said order the petitioner take out a revisional application before this court being CRR No. 1960 of 2013. The same Criminal revisional was disposed of by a Co-ordinate Bench after observing that the investigation is not completed as yet, it would be open to the investigating agency to file charge sheet under aforesaid the sections if the materials collected in course of investigation was warrants.

Police submitted charge sheet in this case vide charge sheet No. 659/14 dated 31.07.2014 u/s 498A/406/506 of IPC read with section 3 and 4 of Dowry Prohibition Act.

On perusing the said charge sheet the present petitioner filed an application praying for further investigation. The Learned Magistrate heard the petitioner and after perusing the record rejected the said application by passing the impugned order dated 05.09.2018.

Hence this revision.

Learned Advocate for the petitioner submits that the impugned order passed by the Learned Magistrate is not conformity with the entire facts and circumstances of this case. The police has not conducted any investigation in respect of the direction of this court vide CRR No. 1960 of 2013. During the course of investigation the statement of the present petitioner was not recorded moreover the police did not take any steps to enquire the death of the victim Rabia Begam nor collected any document regarding the physical condition of the deceased which deteriorate due to the immense torture of the private opposite parties.

He further argued that Learned Magistrate was totally erred in law by deciding the petition for further investigation in a mechanical manner. It was the entire case of the deceased victim that she was mercilessly tortured by the private opposite parties at her matrimonial home by which the physical condition of the victim become critical. The investigation of the police was very mechanical and the cause of death of the victim was not properly elucidated. He further argued that the Learned Magistrate has not gone into the merits of this case in its entirety and mechanically rejected the petition for further investigation. He argued that the death was actually caused due to the serious physical condition of the victim which was

resulted to the heavy torture inflicted by the husband and in laws of the victim. The police did not collect any evidence regarding the physical condition of the victim and it is only reason for which further investigation is required. Accordingly the impugned order is liable to be set aside.

Learned Advocate for the State submits the case diary. He submits that the investigation of the police was ended in charge sheet. During the course of investigation police has collected several materials which prima facie make out the offence punishable u/s 498A/406/506 of IPC against the private opposite parties. After the direction from the Hon'ble High Court in CRR No. 1960of 2013. The Police have collected the medical report and the death certificate of the victim which was placed along with the CD.

He further argued that the Learned Magistrate has perused the CD along with materials collected therein and is of opinion that the further investigation is not required. The cause of death of the victim has specifically mentioned by the doctor in the medical certificate. The Learned Magistrate has observed such medical certificate and opined to that fact. The order of the Learned Magistrate is a speaking order arising illegality. The prayer for further investigation of the petitioner was correctly rejected by the Hon'ble Court.

Heard the Learned Advocate.

Perused the materials on record. I have perused the CD. During the course of hearing of the instant criminal revision a medical report is called for regarding the death of the victim namely Rabia Begam. The report is placed before this court perused the report. The report contains medical certificate and cause of death of Rabia Begam including record -in-patient. It appears from the record that the victim was admitted to the said hospital on 26.10.2012 at 12:30 p.m. During the course of treatment her condition became serious and it was informed to the patient party that she was required to be referred to another hospital. Instead of such opinion of the hospital authority, the patient party wanted to treat the patient by placing her at the said hospital. However the patient was operated and she succumbed at 05:00 a.m. on 27.10.2012. The cause of death was mentioned as acute cardio respiratory failure due to Post Partum haemorrhage (pph). CD reflected that during the course of investigation the police has collected several materials including the statement of available witnesses according to the direction of the court passed in for CRR 1960 of 2013.

The Learned Magistrate has perused the entire materials in the CD; he has also opined that the cause of death which

was mentioned by the doctor has been specifically noted in the CD.

Whether alleged unbearable torture inflicted by the present private OP resulted to the serious physical condition of the victim, can only be ascertained after prolonged the trial of this case. I find no infirmity in the impugned order passed by the Learned Magistrate.

Considering the same I find no merit to entertain the criminal revision accordingly CRR is dismissed.

Connected CRAN applications if pending are also disposed of.

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

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)