

03.05.2023
Court No.42
Item
no.ML/10
sanjay

CRR 4061 of 2022

**Swarna Kamal Mondal & Ors.
Vs.
The State of West Bengal & Anr.**

Mr. Ayan Bhattacharyya,
Mr. Anit Dey,
Mr. Debanjan Mukherjee for the petitioners.

By invoking inherent jurisdiction of this Court, the petitioners have prayed for quashment of further proceedings in connection with Barjora Police Station Case No.125/2021 corresponding to G.R. Case No.979 /21 dated 10th September, 2021 under Sections 498A /323 /307 /406 /34 of the Indian Penal Code corresponding to Charge Sheet No.125/2021 dated 27th September, 2021 under Section 498A /323/ 406/34 of the I.P.C. pending before the Learned Judicial Magistrate, 4th Court at Bankura.

The petitioner no.1 is the husband of the de facto complainant and the petitioner nos.2 and 3 are her parents-in-law.

It is ascertained from the averment made by the petitioners in the instant revision that marriage between the petitioner no.1 and the opposite party no.2 was solemnized on 2nd March, 2020 according to Hindu Rites and Customs. Since after marriage, opposite party no.2 started pressurizing the petitioner no.1 to stay together leaving her parents-in-law. The husband of

the opposite party no.2 tried his level best to keep the opposite party no.2 in good humour but, she was all along a head strong lady. The opposite party no.2 was medically treated in Mission Hospital, Durgapur wherein she was diagnosed with a disease called "Dyspareunia", which made her impossible to maintain and /or consummate the conjugal relationship. The opposite party no.2 never allowed the parents of the petitioner no.1 to stay with her. Thereafter, she left her matrimonial home and went to her parental house. The petitioner no.1 made several attempts for reconciliation but the opposite party no.2 was adamant and she wanted to put an end of their marital relationship. Finding no other alternative, the petitioner no.1 filed a suit for dissolution of marriage, which was registered as MAT Suit No.154 of 2021 in the Court of the Learned Additional District Judge, Bankura. Subsequently, on 10th September, 2021, the opposite party no.2 lodged a complaint against the petitioners under Section 498A / 323 /406/ 34 of the Indian Penal Code. On the basis of such complaint, Barjora Police Station Case No.125/2021 was registered.

It is alleged by the petitioners that the said written complaint contained false allegations against the petitioners. Police without proper investigation submitted charge sheet against the petitioners. The petitioners have filed the instant revision praying for quashment of the said criminal proceeding.

I have heard Mr. Ayan Bhattacharyya, learned Advocate appearing for the petitioners.

I have also perused the statements of the de-facto complainant / opposite party no.2 and other witnesses recorded under Section 161 of the Code of Criminal Procedure, which are annexed with the instant revision. It is submitted by Mr. Bhattacharyya, learned advocate that by merely a physical torture amounting an offence under Section 323 of the I.P.C. does not attract a penal provision under Section 498A of the I.P.C. In support of his submission, Mr. Bhattacharyya refers to a decision of this Court in the case of **Resaul Islam & Anr. Vs. State of West Bengal and Anr.** reported at **(2010) 2 C Cr LR (Cal) 121**.

In the instant case, police submitted charge sheet against the petitioners. Filing of charge sheet prima facie means establishment of charge against the petitioners. On careful perusal of the petition of complaint, the definition of 'cruelty' within the meaning of Section 498A is asserted.

In view of such circumstances, I am not inclined to admit the instant revision at this stage. However, the petitioners are at liberty to agitate this point before the Learned Magistrate at the time of consideration of charge and the learned Magistrate shall take independent decision without being influenced by the observations made hereinabove in any way.

The instant revisional application is summarily dismissed.

(Bibek Chaudhuri, J.)