

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 3694 of 2018**

**IN THE MATTER OF
Mousom Dey Sarkar @ Mousam
Vs.
The State of West Bengal & Anr.**

**For the Petitioners : Mr. Kaushik Choudhury Adv.,
Ms. B. Khatun Adv.**

For the Opposite Party No. 2 : Mr. Ramkrishna Saha Adv.

**For the State : Mr. S.G. Mukherjee, Adv.,
Mr. Imran Ali, Adv.,
Ms. Debjani Shaw Adv.**

Judgment on : 12.09.2023

Subhendu Samanta, J.

The instant criminal revision has been preferred u/s 482 of the Code of Criminal Procedure for quashing of a criminal proceeding being Rishra P.S Case No. 146 of 2014 dated 07.11.2014 u/s 498A/406 IPC now pending before the Learned Judicial Magistrate 3rd Court Srirampur, Hooghly.

The brief fact of the case is that the present petitioner married opposite party No. 2 were the husband and wife. The

opposite party No. 2 herein has lodged a written complaint with the OC Rishra PS. against the present petitioner alleging offence u/s 498A/406 IPC on 07th November 2014. On the basis of such written complaint the Rishra PS Case No. 146 of 2014 dated 07.11.2014 u/s 498A/406 IPC was started. Police took up the investigation and after conclusion of investigation has submitted a charge sheet. The present petitioner has filed this instant criminal revision for quashing of the said proceeding.

The Learned Advocate for the petitioner submits that the marriage between the opposite party No. 2 and the petitioner was held on 27.09.2013 according to Hindu Rites and Customs. The mother and other relatives of opposite party No. 2 were not at all happy with the marriage as the opposite party No. 2 and the petitioner had a love affair and the marriage was held without the information of the relatives and the mother of the opposite Party No. 2. The petitioner also submits that the mother and other relatives of Opposite Party No. 2 has severed all relations with the opposite Party No. 2 for such marriage. Suddenly after few months the mother of the opposite party No. 2 made a contact by a telephone with the opposite party No. 2. On 03.07.2014 mother-in-law of the petitioner suddenly came to the house of the petitioner and said that they shall taken the

opposite party No. 2 to their house for some days. On such the petitioner consented and opposite party no. 2 proceeded to her parental house. Thereafter the brother of opposite party no. 2 suddenly made a call through telephone to the petitioner and threatened him to forget the OP no. 2 and never tried any relationship with his sister. They also not allow the petitioner to make any contact with his wife, consequently he lodged a complaint with the Chairperson West Bengal Commission for Woman so that he may get back his wife. The petitioner also made a diary with the OC Islampur P.S regarding the same incident on 11.07.2014. thereafter the petitioner lodged a written complaint with the O.C Islampur PS Case No. 1671 of 2014 dated 04.09.2019 u/s 448/342/506/34 IPC against the opposite party No. 2 and the mother-in-law and brother-in-law and another persons. In spite of which the opposite party did not return to his matrimonial home. Thus the petitioner filed a suit u/s 9 of Hindu Marriage Act on 13.08.2014 for a decree for restitution of Conjugal Rights which was registered before the Learned Sessions Judge as a MAT Suit No. 60 of 2014.

It is the case of the petitioner that since the opposite party No. 2 left her matrimonial home on 03.07.2014 the petitioner lodged several complaints before the several authorities for getting her back into her matrimonial home

including the filing of a Civil Suit. After all the efforts the petitioner the opposite party no. 2 with the instigation of her mother and brother lodged the instant complaint with the Rishra P.S case No. 146 of 2014 dated 07.11.2014 u/s 498A/406 of IPC.

Learned Advocate for the petitioner submits that the instant criminal proceedings filed by the opposite party no. 2 is mala fide and baseless and on the basis of some concocted story. The mother and brother of the opposite party no. 2 has instigated the opposite party no. 2 to file the instant criminal proceeding. The police has submitted a purported charge sheet after investigation. The charge sheet does not reflect any materials to substantiate the offence punishable u/s 498A/406 IPC. The instant criminal proceeding being filed only to harass the present petitioner need be quashed.

Learned Advocate for the state submits that the police case was registered on the basis of complaint of a married lady. The investigation of the police has ended in charge sheet. Police has collected several materials against the present petitioner during the investigation of this case. The statement and available witnesses has named the present petitioner for his involvement in the alleged offence. The medical reports were

also collected by the IO. Thus at this juncture the criminal proceeding cannot be quashed.

Heard the Learned Advocate.

Perused the materials in the CD.

The chronology of the entire fact shows that marriage between the petitioner and the OP held in the month of August 2013 and admittedly the opposite party left her matrimonial home on 3rd July 2014. The instant FIR was lodged by the wife (OP -2) on 7th November 2014; since 3rd of July 2014 till the 7th November 2014, there was no complaint by the wife against her husband. On perusal of FIR it appears that it has been alleged in the FIR on 03.07.2014 the de-facto complainant (OP 2) was mercilessly beaten by the petitioner by which the Para People (neighbours) appeared and the wife was allegedly driven out from her matrimonial home on the said date. It has also been mentioned that on the next day she was treated by the doctor. It has alleged in the FIR that on 20th of October 2014 the present petitioner suddenly appeared at the parental house of OP No. 2 and assaulted the OP no. 2 and her mother and the FIR was lodged on 07.11.2014 i.e. after 17 days of the alleged incident. From the plaint perusal of the FIR it is true that from July 2014 to October 2014 there is nothing in the FIR regarding the disturbed relationship between the parties. On

the other hand it appears from the several objections of the petitioner that he tried before the several authorities to get her wife (OP 2) back. It further appears that the application u/s 9 of Hindu Marriage Act was allowed ex-parte. Before such order of ex-parte decree was passed, one paper publication was made from the office of the Learned Sessions Judge concern in respect of the filing of such application for restitution of conjugal rights. It further appears the petitioner was also filed one application for divorce u/s 13 of Hindu Marriage Act which was also decreed ex-parte. At present the petitioner and the opposite party No. 2 have no marital life.

In considering the CD it appears to me that during the course of investigation the IO interrogated to several available witnesses and recorded the statement u/s- 161 CrP.C. On perusal of such statements it appears to me that all the witnesses unequivocally stated that the married between the petitioner and the opposite party No. 2 was held without the consent of the mother and other relations of OP no. 2. The statements of the witnesses are actually hearsay and allegations in the statements are general and omnibus.

During the course of investigation the IO has collected the medical papers regarding the treatment of the de-facto complainant at the relevant point of time. From the medical

prescription dated 04.07.2014 it appears that doctor found no external injury on any part of the person of the de-facto complainant. Another medical prescription was also collected dated 8th November 2014 wherein only complaint of headache was there.

Thus after considering the materials in the CD including the statement recorded u/s 166 Cr.P.C and the medical papers, it appears to me that the factum of alleged mental and physical torture and allegation of cruelty upon the de-facto complainant has not subsequently proved. The entire evidence on record appears the prima facie offence punishable u/s 498A/406 IPC against the present petitioner has not made out.

The facts and circumstances of this case goes to show that the wife has left the matrimonial home with the instigation of her mother and brother. The petitioner/ husband has tried several times to get her back and filed several complaints and applications before the several authority. His exercise became futile. To counter the efforts of the petitioner the opposite party no. 2 (wife) has lodged the instant written complaint on the basis of which the criminal proceeding was initiated. If the criminal proceeding is allowed to be continued the same would be tantamount to be an abuse of process of court. By virtue of the direction of the Hon'ble Apex Court passed in **Ch.**

Bhajanlal, the instant criminal proceeding appears to me purposive, harassive and mala fide one. Thus in this case I think it necessary to invoke the inherent power of this court to quash the proceeding. Considering the entire circumstances the instant criminal revision has got merit and it is liable to be allowed.

CRR is allowed.

The Criminal proceeding being Rishra P.S case no. 146 of 2014 dated 07.11.2014 u/s 498A/406 IPC against the present petitioner pending before the Learned Judicial Magistrate 3rd Court Srirampur, Hooghly is hereby quashed.

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.

Returned the CD.

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.)