

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 3736 of 2018

Sk. Sultan Ahamed & Ors.

Vs.

The State of West Bengal & Anr.

For the Petitioners :Mr. Niladri Shekhar Ghosh, Adv.
Ms. Sompurna Chatterjee, Adv.
Mr. Sourav Mondal, Adv.
Ms. Labani Sikder, Adv.

For the State :Mr. Imran Ali, Adv.
Ms. Debjani Sahu, Adv.

For the opposite party no. 2 :Mr. Uday Sankar Chattopadhyay, Adv.
Mr. Suman Sankar Chatterjee, Adv.
Ms. Rajashree Tah, Adv.
Ms. Trisha Rakshit, Adv.
Ms. Aishwarya Datta, Adv.

Heard on : 14.09.2023, 28.11.2023, 07.12.2023

Judgment on : 19th December, 2023

Bibhas Ranjan De, J.

1. This application involves exercising inherent power under Section 482 of Code of Criminal Procedure (for short CrPC) for quashing the entire proceedings in connection with Arambagh Police Station Case no. 26 of 2016 dated 19.05.2016 under Sections 498A/323/406/34 of the Indian Penal Code (for short IPC), 1860 corresponding to G.R. Case no. 932 of 2016 pending before the Ld. Additional Chief Judicial Magistrate, for short (A.C.J.M.), Arambagh, Hooghly.

Brief Facts:-

2. On 19.05.2016 the opposite party no. 2 herein lodged a written complaint to the officer in-charge of the Arambagh Women Police Station alleging, *inter alia*, that the opposite party no. 2 got married with SK Sultan Ahmmed son of SK Jalal Ahmmed of village Buyor Police Station, Arambagh, District Hooghly on 06.02.2015 as per Muslim Law and Kazinama. He is presently working in the Border Security Force. At the time of marriage, the father of the complainant (op 2 herein) gifted 10 vhories of gold ornaments, one Honda

Motor Bike and other household articles as per claim of the members of the in-law's house. Since after marriage the complainant started living with her husband merrily at her in-laws house but soon after she was subjected to various kind of tortures both physically and mentally by her husband and other in-laws. One day at around 12.30 the complainants husband profusely man handled her on account of demanding more dowry from her father. He even tried to kill her but after hearing her scream their neighbours intervened and rescued her. After hearing about this incident the parents of the complainant took help of the police administration. Thereafter, her husband forcefully shifted her to her father's home and when she tried to return she was subjected to death threat. Even after her continuous effort to settle up the matter the complainant failed and finally lodged the aforementioned complaint against the following persons namely:-

- Sk. Sultan Ahammed (Husband)
- Sk. Jalal Ahammed (Father-in-law)
- Morium Bibi (mother-in-law)
- Sk. Morsed Ahammed (elder brother-in-law)
- Sk. Abbas Ahammed (Brother-in-law)

- 3.** On receipt of the complaint Arambagh Women Police Station case no. 24/16 dated 19.05.2016 under Section 498A/323/406/34 of IPC was started. After investigation charge sheet was submitted against four (4) FIR named accused except SK. Abbas Ahammed (brother-in-law) under Section 498A/323/406/34.
- 4.** The case was put into trial. The Ld. ACJM, Arambagh, Hooghly framed charge under Section 498A of IPC only and the case was fixed for recording evidence.
- 5.** Ld. Counsel, Mr. Niladri Shekhar Ghosh, appearing on behalf of the petitioners has asserted that allegation of torture has not been stated specifically in the written complaint. Mr. Ghosh took me to certified copy of the order of framing charge by the Ld. Trial Court wherein the charge under Section 323 & 406 were edited out and thereby Mr. Ghosh has tried to make this Court understand that allegation of assault and misappropriation of Stridhan Property were not ratified by the evidence collected during investigation.
- 6.** Mr. Ghosh has further took me to the copy of the General Diary lodged by petitioner no. 5 Morium Bibi apprehending a complaint to be filed at the behest of the opposite party no. 2.

7. Mr. Ghosh, thereby, has capitulated that the instant case is nothing but a retroaction of the General Diary lodged on behalf of petitioner no. 5 (Mariam Bibi). Mr. Ghosh has further contended that husband of opposite party no. 2 being a BSF personnel and by virtue of his job most of the time after his marriage he remained on duty. In support of his contention he has referred to document annexed and marked as P1.
8. Before parting with Mr. Ghosh has shown some documents in support employment of petitioner no. 1 (husband of the opposite party no. 2).
9. Ld. Counsel Mr. Uday Sankar Chattopadhyay, appearing on behalf of the opposite party no. 2 has submitted that evidences collected during investigation are sufficient to trigger trial against all the petitioners.
10. Ld. Counsel, Imaran Ali, appearing on behalf of the State, has referred to the statement of witnesses recorded under Section 161 of the Cr.PC during investigation ended in charge sheet.

Analysis:-

11. The general and consistent law laid down by the Honb'le Apex Court in plethora of decisions as follows:-

- The inherent power of High Court under Section 482 of CrPC for quashing has to be exercised sparingly with circumspection and in the rarest of rare cases.
- Exercising of inherent power under Section 482 of Code of Criminal Procedure (for short CrPC) is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to court that the trial would like to be ended in acquittal.

12. The High Court in exercise of his jurisdiction under Section 482 of CrPC does not function either as a Court of appeal or revision, and such power can be exercised namely,

- a) to give effect to an order under the CrPC,
- b) to prevent abuse of the process of the court, and
- c) to otherwise secure the ends of justice.

13. In winding up, I cannot refrain myself from reproducing the eloquent principles laid down by the Hon'ble Apex Court in ***State of Haryana and others vs. Bhajanlal and others*** reported in ***1992 Supp (1) SCC 335***, as under:-

“ 102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

14. In the instant case, though charge sheet was submitted under Section 498A/323/406/34 of IPC but Ld. Magistrate in exercising his power under Section 240 of the Cr.PC framed charge against the accused/petitioner under Section 498A IPC after considering police report and the documents forwarded by the police under Section 173 of the Cr.PC.

15. Therefore, by no stretch of imagination, I am unable to infer that there is no prima facie material to put the case into trial for the offence punishable under Section 498A of the IPC.

16. At this nascent stage, I am not agreeable with Mr. Ghosh that this case was lodged as a counter blast of a GD entry

which cuts both ways and with regard to defence on behalf of petitioners concerning employment of husband of opposite party no. 2, in my opinion, is a subject matter of trial.

17. having gone through the written complaint along with evidence collected during investigation, I **do not** find that the allegation made in the complaint/FIR even if taken on their face value and accepted in their entirety **do not** prima facie constitute any offence or make out a case against the petitioners /accused or where allegations made in the complaint and the evidence produce in support of the same **do not** disclose the commission of **any offence** and make out a case against the petitioners/accused, to exercise the extraordinary inherent power to quash the proceeding of this case.
18. In the aforesaid view of the matter, the revision application being no. 3736 of 2018 stands dismissed on contest without in costs
19. Case diary be returned.
20. Interim order, if there be any, stands vacated.
21. Pending applications, if there be any, stand disposed of accordingly.

- 22.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 23.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]