

27.03. 2023

Item No.14.

n.b.

Ct. no. 551

CRR 3855 of 2017

With

IA No.CRAN 2 of 2018 (Old No. CRAN 3721 of 2018)

Mira Bose & Anr.

Vs.

The State of West Bengal & Anr.

Mr. Rajdeep Mazumder,

Mr. Pritam Roy,

.....For the Petitioners

Ms. Sreyashee Biswas,

.... For the State.

This is an application for quashing of the charge-sheet of entire proceeding arising out of Haridevpur P.S. Case No.624 of 2015 under Sections 498A/307/34 of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act, now pending before the Learned additional Chief Judicial Magistrate, Alipore, South 24 Parganas.

The brief fact of the case is that the present opposite party no.2 lodged written complaint with the Hareidevpur P.S. contending, inter alia, that she was subjected to physical and mental torture attributed upon her by the husband and in-laws. It has been alleged in the petition of complaint that she has been tortured both physically and mentally by the husband and in-laws for a demand of further dowry of Rs.2,00000/-. She has also alleged that the husband tried to kill him by pouring kerosene oil upon herself and minor daughter. She has also mentioned about the factum of torture in presence of her relatives by the husband.

On the basis of FIR Haridebpur P.S. Case No.624 of 2015 was started under Sections 498A/307/34 of the I.P.C. read with Sections 3 /4 of the Dowry Prohibition Act. Investigation of the police ended in charge-sheet against all accused persons under Section 498A/307/34 of the IPC read with Sections 3/4 of Dowry Prohibition Act. During the course of investigation the police did not find any sufficient materials to substantiate the offence punishable under Section 307 of the IPC. Thus, the allegation under Section 307 was dropped. Charge-sheet was submitted under Section 498A/34 of the IPC read with Section 3/4 of the Dowry Prohibition Act. Accused No.1 is husband, accused no.2 is father in law, accused no.3 is mother-in-law and accused no.4 is the sister-in-law. The present petitioners are the accused nos.3 and 4 i.e. mother-in-law and sister in law respectively.

Learned advocate appearing for the petitioners submits before this Court that the allegations as mentioned in the F.I.R. against the present petitioners i.e. mother-in-law and sister in law are general and omnibus. It has been specifically argued by the learned advocate for the petitioner that on a plain reading of the F.I.R., the allegation of the de facto complainant is only raised against the husband i.e. accused no.1.

He further pointed out that the demand of dowry as well as the torture upon her was raised against the husband and the allegation of attempt to murder is also against the husband. He further argued that the present petitioners i.e. in-laws are residing separately at Siliguri and the husband and the de facto complainant were stayed at Calcutta at a flat. During the course of

investigation the neighbouring owners of the flats were enquired and statements were recorded under Section 161 of the Code of Criminal Procedure.

He further argued that materials in the Case Diary do not suggest the instant criminal case may be allowed to be continued against the present in-laws. He prayed for quashing of the case against present petitioner. In support of his contention he cited decisions reported in **(2022) 6 SCC 599**.

I have gone through the judgment. The Hon'ble Apex Court has discussed the present phenomena of filing the case under Section 498A of the I.P.C. and the fate of proceedings against the in-laws. During the discussion, Hon'ble Apex Court has discussed the earlier judgments of the Hon'ble Apex Court passed in **Arnesh Kumar Vs. State of Bihar, Preeti Gupta Vs. State of Jharkhand** and **Geeta Mehrotra Vs. State of U.P.** The concluding principle of the citation was mentioned in Paragraph 17 of the judgment quoted as follows:-

“17. The above mentioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in laws of the husband when no prima facie case is made out against them.”

Learned advocate for the petitioner submits that the judgment passed by the Hon'ble Apex Court and the guidelines thereof goes to suggest that the present petitioner i.e. in-laws are liable to be not prosecuted by the Court of Law and long pending

criminal proceeding against the present petitioner/in laws would amount to be the abuse of process of law. He prayed for quashing.

Learned advocate appearing on behalf of the State submits before this Court that the investigation of the police is ended in charge-sheet. During the course of investigation police has collected statements of available witnesses. He referred to the statement of available witnesses in the Case Diary. She further argued that the statements of available witnesses disclosed the involvement of the present petitioner in the alleged offence. She further pointed out the role of the mother in law and sister-in-law are general and omnibus but that can only decide and whether they influenced upon the husband, can not be considered at this stage. She further pointed out that for proper decision, the matter can only be corroborated or contradicted during the criminal trial, so, at this stage the prayer for quashing cannot be entertained.

Heard the learned advocates, perused the materials on record, perused the Case Diary and also perused the statements of available witnesses. It is the admitted fact that the present de facto complainant and her husband were stayed at Calcutta and the in-laws were staying at Siliguri. The allegations in the FIR if taken to be true on this stage, then also the statement actually does not disclose any direct involvement of the present petitioner i.e. the mother in law and sister in law. It has been alleged in the petition of complaint that while the de facto complainant informed the factum of torture of the husband to them, they rebutted her plea and they instigated the husband to do such torture. The statements of available witnesses i.e. neighboring flat owners stated that they

heard further noise of quarrel between the de facto complainant and the present petitioner. The witnesses also stated that they did not see their eyes any fact of torture.

In considering the facts and circumstances of the case, it appears that the present petitioner is the mother in law and sister in law of the de facto complainant. In the FIR direct allegation of torture whether physically or mentally was not raised against the present petitioner. The demand of dowry was also against the husband, the statement of witnesses, it can be taken to be true, at this stage, this also not sufficient to prove the allegations under Section 498A and Section 3 and 4 of the Dowry Prohibition Act against the present petitioner.

Considering the entire circumstances, I consider the judgment of the Hon'ble Apex Court it appears that the facts and circumstances of this case it is very much similar to the fact of the said case of the Hon'ble Apex Court and considering the same, I am of the view that general and ominous allegations against the present petitioner who are the mother-in-law and sister-in-law, cannot ipso facto prove the factum of the torture and the instigation of commit such offence by the husband.

Thus, I find the further proceeding of the criminal case against the present petitioner would amount an abuse of process of Court. Thus, I find merit to entertain the revisional application.

The instant criminal revisional application is allowed.

The criminal proceeding against the present petitioners arising out of Haridevpur P.S. Case No.624 of 2015 under Sections 498A/ 307/34 of the Indian Penal Code read with Sections 3 and 4

of the Dowry Prohibition Act, now pending before the Learned additional Chief Judicial Magistrate, Alipore, South 24 Parganas and charge-sheet has been submitted under Section 498A of the IPC read with Sections 3 and 4 of the Dowry Prohibition Act is hereby quashed.

The CRR 3855 of 2017 is disposed of.

Any pending connected applications are also disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)