

04.12.2023

ct. 236

sk,sl.1.

CRR 4291 of 2007

CRAN 1/2008,CRAN 6/2010,CRAN 9/2023

In the matter of: Bikramjit Saha & Ors.

Mr. Joydeep Biswas
Mr. Kaushik Ghosh
...for the petitioners.

Mr. Kallol Mondal
Mr. Krishan Ray
Mr. Souvik Das
Mr. A.Banerjee
...for the O.P. No.2.

Mr. Madhusudan Sur
Mr. N.P.Agarwal
Mr. Pratick Bose
...for the State.

1. This is an application under Section 482 of the Code of Criminal Procedure filed by the petitioners seeking quashment of proceeding in G.R.Case No. 219 of 2006 arising out of Nabadwip Police Station Case No. 225 of 2006 dated 16.12.2006 under Sections 498A/406/506/34 of the Indian Penal Code, pending before the learned Judicial Magistrate, 1st Class, Nabadwip, Nadia.
2. Briefly stated the opposite party no. 2, depicting herself as legally married wife of the petitioner no. 1 who was treated with cruelty filed a petition of complaint before the learned Judicial Magistrate,

Nabadwip alleging inter alia that the marriage between the opposite party no. 2 and the petitioner no. 1 was solemnized on 22nd January, 2003 following the Hindu rites and customs. At the time of marriage, father of the complainant gave a sum of Rs. 50,000/- by cash to his son-in-law along with buttons and wristlet made of gold, he also gave a wrist watch. The complainant was given a sum of Rs. 25,000/- and gold ornaments weighing about 30 bhoris, utensils made of silver, television etc. The said marriage was duly consummated. During her stay in her matrimonial home, the complaint was subjected to torture both physical and mental, by her husband and in-laws over further demand of Rs. 50,000/-. The complainant informed her parents about such demand but her father expressed his helplessness to meet such unlawful demand. Failure of her father brought further misfortune to the complainant in the form of physical and mental torture. However, on 30th June, 2004 she gave birth to a female baby and after the birth of the child the accused persons renewed their illegal demand of Rs. 50,000/-. The financial condition of the father of the complainant did not permit him to meet such demand. On several occasions the accused persons were

requested by the father of the complainant not to inflict torture upon the complainant but in vain. In order to kill the complainant the accused persons in used to keep the knob of gas cylinder open.

3. Being tortured by her husband and in-laws at one point of time the complainant was thinking about each committing suicide. The complainant however, informed her father about her plight. On 4th August, 2006 her parents came to settle the dispute but in vain and on that date she was driven out of her matrimonial home with her baby. She was compelled to leave all her Stridhan properties in her matrimonial home. The accused persons used to abuse her over phone even threatened her with dire consequences.
4. In the second week of Agrahayana, the accused husband came to the house of the complainant at Nabadwip to inform that he had filed a suit for divorce in Sealdah Court and intimidated her by saying that she would expose herself to danger if she made any attempt to contest the said suit.
5. The Judicial Magistrate forwarded the petition-complaint to the jurisdictional police station under Section 156(3) of the Criminal Procedure Code and Nabadwip Police Station Case No. 225 of 2006 was registered on 16th December, 2006.

6. Police took up investigation and submitted a charge-sheet citing seven persons as witness out of which two are police personnel.
7. Mr. Biswas, learned counsel representing the petitioners submits that the defacto complainant left her matrimonial home more than two years after the birth of the girl child. On 26th November, 2006 filed a suit for dissolution of marriage on the ground of both mental cruelty as well as adultery. The suit was registered as Matrimonial Suit No. 238 of 2006. Subsequent thereto, the FIR was registered on 16 December, 2006 and this fact indicates that the criminal proceeding has been initiated as a counter blast to the suit for divorce.
8. It is further contended by Mr. Biswas that the content of the petition of complaint is full of general an omnibus allegations regarding demand of money and torture both mental and physical. It is nothing but an abuse of process of law.
9. It is further submitted by Mr. Biswas that on 20th January, 2007, the defacto complainant-opposite party no. 2 filed a suit for Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act and both the proceedings are now pending before the learned Court of Additional District Judge at Sealdah.

10. Drawing my attention to the fact that in course of investigation police did not seize any document to substantiate the claim of the complainant about the Stridhan properties presented to her at her matrimonial home. The parents of the complainant have not been cited as witness out of five witnesses two are from the neighborhood of the petitioners' residence at Nabadwip, none of the witnesses can be said to have direct knowledge about the alleged incident.
11. It is submitted by Mr. Biswas that the criminal proceeding is attended with mala fide.
12. Mr. Kallol Mondal, learned counsel representing the defacto complainant, opposite party no. 2 submits that the lady was tortured like anything and the plight of the complainant if considered in the light of Section 498A of the Indian Penal Code, there would be every reason for a man of ordinary prudent to hold that the defacto complainant was tortured in her matrimonial home. She was harassed for money. Therefore, this proceeding cannot be said to be an abuse process of law.
13. The lady who had no financial standing was compelled to leave her matrimonial home leaving all her Stridhan properties. It is submitted by Mr.

Mondal that the proceeding should be allowed to continue to reach it's logical conclusion.

14. Mr. Sur, learned counsel representing the State submits that the police after investigation has submitted a charge-sheet and there is every reason to presume the commission of offence within the meaning of Section 498A/406 of the Indian Penal Code.

15. From the attending facts of the case it is admitted that the petitioner no. 1 and the opposite party no. 2 are legally married. On 21st January, 2003 their marriage was solemnized, subsequently registered on 4th June, 2003. The child was born on 30th April, 2004 and on and from 4th August, 2006 they have been living separately.

16. On 26th November, 2006 the petitioner no. 1 filed a suit for dissolution of their marriage and the FIR was registered on 16th December, 2006. After perusal of FIR as well as after going through case diary, I do not find any whisper indicating entrustment of Stridhan properties made by the complainant. There is nothing to indicate that Stridhan properties of the complainant were entrusted either with husband or her parents-in-law. Therefore, there is no ingredient of offence,

prima facie, within the meaning of Section 406 of the Indian Penal Code.

17. The content of the FIR as well as statement recorded by the Investigating Officer under Section 161 of the Criminal Procedure Code demonstrates some omnibus allegations regarding unlawful demand of money and failure of meeting such alleged demand resulting into both physical and mental torture. The conduct of the opposite party no. 2 if considered from the point of view of human probability, it becomes really an enigma as to what prompted the opposite party no. 2 to take out an application under Section 9 of the Hindu Marriage Act, expressing thereby her desire to live with the man, she married and who has been depicted as utterly cruel person. It is also very difficult to swallow that the inmates of the house would expose their life to danger as well, by keeping knob of gas cylinder open, with an intention to get the opposite party no. 2 killed.

18. In my humble opinion, this criminal proceeding has been initiated to wreak vengeance. It is attended with mala fide and in order to avert the abuse of process of law, the proceeding should be quashed which I accordingly do.

19. The proceeding pending before the learned Judicial Magistrate, Nabadwip in G.R. Case No. 219 of 2006 stands quashed.
20. The interim order, if any, stands vacated.
21. The copy of this order be sent down to the learned trial court for necessary action.
22. Let the case diary be returned.
23. Petitioner Nos. 1 and 3 be discharged from bail bonds.
24. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Siddhartha Roy Chowdhury, J)