

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 1859 of 2020
RASHMI JHA & ORS.
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioners	: Mr. Rohit Das, Adv. Mr. Indradip Das, Adv. Ms. Kishwar Rahaman, Adv. Mr. Preetam Majumder, Adv. Ms. Sristi Roy, Adv. Mr. Divya Jyoti Tebriwal, Adv.
For the State	: Ms. Faria Hossain, Adv.
For the O.P. No. 1	: Mr. Mukund Mohan Jha (in person)
Hearing concluded on	: 1 st December, 2023
Judgement on	: 8 th December, 2023

Siddhartha Roy Chowdhury, J.:

1. The petitioners by filing this application under Section 482 of the Code of Criminal Procedure, 1973 is seeking quashment of the charge sheet no. 135 of 2020 dated 21st July, 2022 under Section 468/471/420/406/120B of the Indian Penal Code and all proceedings in G.R. No. 3224 of 2019 arising out of New Town Police Station FIR No. 429 of 2019 dated 20th October, 2019, pending before the learned Chief Judicial Magistrate, Barasat, North 24 Parganas.
2. Briefly stated, on 12th October, 2019 Mukund Mohan Jha set the criminal administration of justice into motion by informing the

Officer-in-charge of New Town Police Station *inter alia*, that his marriage with Reshmi Jha was solemnized on 12th June, 2011. They have two children, Rudra Mohan Jha, the son who was born on 8th June, 2012 and daughter, Shivani Jha, the daughter has born on 13th November, 2015.

3. It is alleged :

“That Rashmi Jha has been harassing me both physically as well as mentally, since immediately after the marriage. During the course of matrimonial life Rashmi Jha has been willfully indulging in forgery, cheating, breach of trust, adultery, damaging property, physical attacking, threatening and willful mismanagement of property, thefts in coordination with her family members and friends. The key family members and friends include Father Har Nath Jha, Mother Anandi Jha, Uncle Shakti Nath Jha, Aunt Prita Jha, Sister Chandra Jha, Brother Keshav Jha, Cousin Shyama Jha, Friend Rupjeet Kaur and others. Such actions of Rashmi Jha have caused immense hardship for us as well as our extended family living out of city. So many time Rashmi Jha has indulged in beating my children against my wishes. The key incidents are outlined in following points:

1. Rashmi Jha took possession of all family Gold and Silver ornaments, belonging to me, my son Rudra Mohan Jha and daughter Shivani Jha during the year 2014. The said jewellery was promptly shifted from Matrimonial house to Rashmi Jha parents place without my knowledge. Some of the said Jewelleries are

hypothecated at Mannapuram gold loan. The relevant document is Annexed.

2. During August-December 2018 Rashmi Jha had been consistently abandoning children and living at undisclosed location in my absence. During the month of December 2018, when I was not home, Rashmi Jha abandoned children alone night after night and stayed at the said undisclosed location. The location tracking of Rashmi Jha during December 2019 to such location is Annexed. Neighbours and Security guards found the children abandoned on as occasions.

3. During the Month of November 2018, Rashmi Jha forged the Photo of my and my daughter Shivani Jha for official purpose. The forgery work was carried out by Rupjeet Kaur who is friend of Rashmi Jha. The email exchange of Rashmi Jha and Rupjeet Kaur on Photo Forgery is Annexed.

4. On 22 of November 2018, Rashmi Jha suddenly left for her parent's place in Dakhineshwai along with children. The WhatsApp chat communication is Annexed. Later it was found that Rashmi Jha had abandoned the children and went to Mandormoni. The Location tracking is Annexed. During the trip Rashmi Jha was unreachable over mobile. The picture at Mandormoni is also annexed.

5. On 11th of January 2019 Rashmi Jha abandoned the Matrimonial house, Baslimu Jha and her family members claim that Rashmi Jha went to her parent's house in Dakhineshwar

Rasim Jha had gone to Gangtok to meet her boyfriend. A sum of INR 500000/- was found missing from matrimonial house on 17th of January 2019. When whereabouts of money was questioned, Rashmi Jha stopped all communication with Mukund Mohan. The Train ticket of Rashmi Jha is Annexed.

6. During start of January 2019 Rashmi Jha has been talking over phone for whole night. The call records of call made by Rashmi Jha is Annexed. She was sleeping for whole day and was not taking any care of Children. When questioned, Rashmi Jha threatened to put me and my Parents in Jail in fake Dowry and harassment case.

7. Rashmi Jha has been indulging in relationship with many men outside marriage. Rashmi Jha confessed the same over WhatsApp chat on 21 January 2019. The same is Annexed.

8. On 26 of October 2018 Rashmi Jha broke household items, including wall mirror at her matrimonial house. Rashmi Jha attacked me with the sharp glass forcing me to flee the matrimonial house. The picture of Rashmi Jha holding the sharp object is Annexed.

9. On 13th of February 2019 Rashmi Jha went on Rampage at Matrimonial house and left it unliveable. Rashmi Jha damaged switched-on Gas pipe which could have caused extensive damage to neighbourhood. The picture is Annexed. When I tried to stop Rashmi Jha from rampage, I was attacked and severely injured in Left Hand. The picture is Annexed.

10. Rashmi Jha continuously created issues within neighbors by breaking household items. Many a time complains were launched and society Security guards had to come to matrimonial house with warning.

11. Rashmi Jha and her family and friends have been directly as well as indirectly forcing me to not take any actions against Rashmi Jha and her family & friends. Rashmi Jha has been troubling my parents at Darbhanga to pressurize me. My Father was forced to complain to local Magistrate and Local Police Station.”

4. Pursuant to such information New Town Police Station Case No. 429 of 2019 was registered on 20th October, 2019 under Section 468/471/420/406/120B of the Indian Penal Code against Rashmi Jha and eight other accused persons. Police took up investigation and submitted charge sheet under Section 468/471/420/406/120B of the Indian Penal Code.
5. It is contended by Mr. Rohit Das, learned Counsel for the petitioner that admittedly the de-facto complainant Mukund Mohan Jha and the petitioner no. 1 Rashmi are legally married husband and wife and admittedly they have been staying apart since 11th January, 2019. On 4th April, 2019 Rashmi Jha had been to her matrimonial home as the parents-in-law were not attending her phone calls, with whom the children of Rashmi were living at the relevant point of time in Darbhanga. Having found Rashmi at the door, Mukund Mohan Jha pulled her in and beaten her up and made her sustain injuries. The

neighbouring people somehow intervened and rescued Rashmi. Her father and uncle were informed who came and took Rashmi with them. Before going to police Rashmi informed the Green Wood Park Owners Association about the incident and went to the New Town Police Station where she was told to go for medical treatment and then to the Women Police Station at Sector-V, Salt Lake. Accordingly, Rashmi informed the said police station in writing about her plight.

6. The information since disclosed offence cognizable in nature Bidhannagar Women Police Station Case No. 24 of 2019 dated 5th April, 2019 was registered. Police took up investigation which culminated into submission of charge sheet against Mukund Mohan Jha under Section 498A/406 of the Indian Penal Code on 10th September, 2019.
7. Therefore, according to Mr. Das, learned Counsel New Town Police Station Case No. 429 of 20196 dated 20th October, 2019 is nothing but a counter blast to the FIR lodged at the behest of Rashmi Jha.
8. Drawing my attention to the charge sheet filed by the Investigating Officer it is submitted by learned Counsel for the petitioner that there is no ingredient of offence within the meaning of Section 468/471 of the Indian Penal Code, the opposite party no. 2 who was trying to get her daughter admitted in the school, she had to use the photograph of the opposite party no. 1 which was available in the web world. It is further submitted by learned Counsel that in the FIR the informant Mukund Mohan Jha alleged that a sum of Rs. 5,00,000/- was missing from the house of the informant which was detected on 17th

January, 2019 but the Investigating Officer did not and could not find out any ingredient of offence within the meaning of Section 379 of the I.P.C. There is no material collected to justify the action of the Investigating Officer to saddle the petitioners with an offence within meaning of Section 420 of the I.P.C. There is no ingredient of offence within the meaning of Section 406 of the I.P.C. as well. In the charge sheet five persons have been cited as witnesses out of them witness nos. 4 and 5 are the police personnel. The de-facto complainant is witness no. 1. Witness nos. 2, 3 are his parents who are the resident of Darbhanga, Bihar. The statement of those two witnesses, as recorded by the Investigating Officer under Section 161 of Cr.P.C. only suggest that the petitioner no. 1 lost her interest in Mukund Mohan Jha. She was indulging in extra marital relationship. She used to desert her children. She took away various articles and a sum of Rs. 5,00,000/- from the flat and lodged a false case against them. This evidence, according to learned Counsel for the petitioners, is not sufficient to justify the charge sheet.

9. Ms. Faria Hossain, learned Counsel representing the State submitted the case docket and with all fairness could not justify the action of the Investigating Officer in filing the charge sheet bereft of evidence.
10. Mr. Mukund Mohan Jha the opposite party no. 1 argues that his wife Rashmi Jha used to inflict torture upon him. She used to desert her children and frequently she used to leave her matrimonial home. Rashmi was maintaining extra marital relation. She went to Gantok

to meet her boyfriend. On 17th January, 2019 the opposite party no. 1 detected that a sum of Rs. 5,00,000/- was missing from his house and Rashmi refused to give any explanation. She took away all the gold ornaments and silver ornaments of Mr. Jha and his children in the year 2014 and obtained loan by mortgaging those ornaments. In the month of November, 2018 she forged the photograph of the opposite party no. 1 and his daughter Shivani Jha for official purpose. On 22nd November, 2018 she went to Dakhineswar with the children and from there she went to Mondarmoni. On 11th January she abandoned the matrimonial house. She committed damage to the household articles and tried to commit mischief by damaging the switch of the gas pipe. It is further submitted by Mukund Mohan Jha that the investigation was not properly conducted. Further investigation to his FIR is required to be undertaken by police. According to Mr. Mukund Mohan, a term insurance policy was taken in his name keeping him in dark which is an act of forgery.

11. Upon careful perusal materials on record I find that Rashmi initiated criminal action against her husband and father-in-law by informing the police on 5th April, 2019 about her plight. After investigation police submitted charge sheet on 10th September, 2019 under Section 498A/406 of the I.P.C. Subsequent thereto, on 12th October, 2019 this FIR was registered which contains allegation that Rashmi took possession of all the gold and silver ornaments owned by opposite party no. 1 and his son and daughter way back in 2014. While the daughter was born in 2015

12. In course of investigation the Investigating Officer examined only two witnesses under Section 161 of Cr.P.C. and recorded their statement which nowhere suggests the commission of offence within the meaning of Section 468/471/420/406 of the Indian Penal Code. In the charge sheet it is disclosed that on 11th January, 2019 Rashmi committed theft in respect of Rs. 5,00,000/- from the almirah of the complainant. But the witnesses examined by the Investigating Officer did not make such statement to the Investigating Officer. The de-facto complainant stated that on and from 17th January the cash amount of Rs. 5,00,000/- was found missing. There was no statement that it was taken out of the almirah. That apart no material was collected to indicate that such money was in the almirah on the alleged date of occurrence on 11th January, 2019.

13. Section 463 of the I.P.C. defines forgery. Section 463 says :-

“463. Forgery.— Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

14. Even in absence of any document, the allegation of forgery if assumed to be correct, there is nothing to suggest that by taking a policy in the name of her husband, Rashmi Jha has made any attempt to cause damage to the opposite party no. 1 or his family members.

There is nothing to suggest that the so called forged document was used either for cheating or for any other purposes.

15. Hon'ble Apex Court in **MOHAMMAD WAJID VS. STATE OF UP** reported in **AIR 2023 SC 3778** held :

“30. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to

the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

16. If we consider the content of the FIR which led to submission of charge sheet there is every reason to presume that the criminal proceeding was initiated by Mukund Mohan as a counter blast to wreak vengeance against his wife and her parents, friends etc. as Rashmi Jha initiated a criminal proceeding being assaulted by her husband.
17. The proceeding appears to be attended with mala-fide and in my humble opinion, is a manifestation of abuse of process of law. Hence, the same should not be allowed to remain in force and should be set aside, which I accordingly do.
18. Consequently, the proceeding in G.R. No. 3224 of 2019 arising out of New Town Police Station FIR No. 429 of 2019 dated 20th October, 2019, pending before the learned Chief Judicial Magistrate, Barasat, North 24 Parganas stands quashed. Accused person be discharged from bail bonds.
19. Let a copy of this judgement be sent down to the learned Trial Court for information and necessary compliance.

20. Urgent certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)