

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CRIMINAL REVISIONAL JURISDICTION)**

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 19 of 2022

REBA BISWAS & ORS.

VS.

THE STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Debapratim Guha Roy, Adv.
Mr. Deborshi Dhar, Adv.

For the O.P. No.2 : Mr. Aayush Mitrukar, Adv.

Hearing concluded on : 31st August, 2023

Judgement on : 8th September, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Section 482 of the Code of Criminal Procedure filed by the petitioners seeking an order of quashment of the proceeding in C.R. Case No. 337 of 2020 under Sections 406/506/34 of the Indian Penal Code pending before the learned 1st Court of Judicial Magistrate, Siliguri and all orders passed in connection therein.
2. Briefly stated, petitioner no. 1 is the mother-in-law, petitioner no. 2 is the brother-in-law and petitioner no. 3 is the husband of the opposite party no. 2 Ms. Nishadri Sarkar nee Biswas, who is married to petitioner no. 3. The marriage took place on 27.01.2012 and after marriage petitioner no. 3 and the opposite party no. 2 started residing

at Chandigarh, where the petitioner no. 3 was posted for his job. The opposite party no. 2 on 24.7.2013 informed Bhaktinagar Police Station in writing about her alleged plight at the hand of the petitioners. On the basis of such information, Bhaktinagar P.S. Case No. 1432 of 2013 was registered under Section 498A of the Indian Penal Code but the same was quashed vide order dated 11.8.2017 as against petitioner nos. 1 & 3.

3. Sometime, in the year 2015 the opposite party no. 2 filed an application under Section 12 of the Protection of Women from Domestic Violence Act against the petitioners, which was stayed by a co-ordinate Bench of this Court vide order dated 03.8.2018. Subsequent thereto, the petitioners took out an application under Section 94 of the Code of Criminal Procedure before the learned Sub-Divisional Magistrate, Jalpaiguri and in the month of September 2020, she filed the complaint before the learned Additional Chief Judicial Magistrate, Siliguri which was registered as C.R. Case No. 337 of 2020 under Sections 406/506/34 of the Indian Penal Code. Learned Jurisdictional Magistrate, issued process after complying with the provision of Section 200 of Code of Criminal Procedure upon the petitioners.

4. It is further contended that opposite party no. 2 filed an application for dissolution of marriage under Section 13 of Hindu Marriage Act in the month of September 2020 before the learned Additional District Judge, 1st Court, Siliguri and demanded a sum of

Rs.50 lacs towards her “Maintenance”. The issue is now before the learned Mediator.

5. Heard Mr. Guha Roy, learned counsel appearing on behalf of the petitioners and Mr. Mitrukar, learned counsel representing the opposite party no. 2.
6. Mr. Guha Roy, submits that the opposite party no. 2 wayback on 24.7.2013 informed the Officer-in-Charge, Bhaktinagar Police Station in writing that while she was coming from Chandigarh, few gold ornaments were lost from her bag. She maintained silence about the alleged entrustment of any of her gold ornaments. In her second complaint under Section 12 of the Protection of Women from Domestic Violence Act she did not make any whisper about misappropriation of gold ornaments by her husband and/or in-laws. Consequent upon her petition under Section 94 of Code of Criminal Procedure, by the order of the Executive Magistrate, Streedhan Properties were recovered and the same were released in favour of the opposite party no. 2 on 18.9.2018.
7. Two years thereafter, this petition of complaint was filed and within the four corners of the said petition of complaint no whisper was made by the opposite party no. 2 about the entrustment of gold ornaments by the opposite party no. 2 to any of the family members of the husband. She made a statement that the gold ornaments were taken out of her possession by her mother-in-law in connivance with her husband, therefore, according to Mr. Guha Roy, learned Judicial

Magistrate, 1st Court, Siliguri had no reason to issue process against the petitioners under Section 406/506/34 of the Indian Penal Code.

8. Refuting such contention, Mr. Mitrukar, learned Advocate for the opposite party no. 2 strenuously argues that all the orders either quashing the proceeding under Section 498A of the Indian Penal Code or order of stay of all further proceeding in the case under P.W.D.V. Act were passed in absence of the opposite party no. 2. Mr. Mitrukar, learned Advocate draws my attention to the averments made in paragraphs 5 and 9 of the petition of complaint to support the order impugned and action taken by learned Jurisdictional Magistrate.
9. It is submitted that there is reason to presume *prima facie* that petitioners being the mother-in-law, brother-in-law and husband of the opposite party no. 2 committed an offence within the meaning of Sections 406/506 of the Indian Penal Code in furtherance to their common intention. Therefore, they must face the trial.
10. From the attending facts of the case it is admitted that the petitioner no. 3 and the opposite party no. 2 are still legally married husband and wife and their marriage took place on 27.01.2012. At the behest of opposite party no. 2 police registered Bhaktinagar P.S. Case No. 1432 of 2013 dated 24.7.2013. In her written information, that led to registration of the F.I.R. the opposite party no. 2 maintained silence as to the entrustment of the gold ornaments though at her behest the case was registered against these three petitioners.

11. In her petition of complaint under Section 94 of Code of Criminal Procedure she stated that her Streedhan Properties were lying in the custody of the accused persons. Though she made an averment that she requested 'the opposite party' to return her Streedhan Properties but her request was not acceded to and learned Executive Magistrate issued appropriate order for recovery of Streedhan Properties but no gold ornament was recovered.
12. In her petition of complaint being CR 337 of 2020 as well the opposite party no. 2 did not make any whisper as to the entrustment of her gold ornaments with any of the accused persons, rather she stated that accused number 2 in connivance to the accused number 1, had taken the possession of all the jewelleries of the complainant as she was not matured enough to handle all such articles and both the keys of the Almirah also taken away by the accused persons.
13. Section 405 of Indian Penal Code says :-

"Section 405 - Criminal breach of trust
Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"."
14. In absence of any averment of entrustment, or dominion over property, proceeding cannot be maintained under Section 406 of the Indian Penal Code. Though we can trace the ingredient of offence

within the meaning of Section 405 of the I.P.C. in the petition of complaint, but the narrative, which remained untold in previous proceedings, as pointed out by learned Counsel for the petitioner, veiled the entire averment with dense shadow of suspicion. There is no whisper as to how the opposite party no. 2 was criminally intimidated to constitute any offence within the meaning of Section 506 of I.P.C.

15. A general and bald statement is made by the informant that in the early March 2020, the complainant went to meet the accused persons at Siliguri and requested them to return the jewelries when she was threatened. This narrative does not survive the test of human probability *prima facie*.
16. Mr. Mitrukar submits that the issues raised by the petitioners can be decided in course of trial, therefore, liberty should be given to the opposite party no. 2 to prove her case in course of trial.
17. From the chronology of events it transpires that with the passage a time, the opposite party no. 2 developed her case only to harass her husband and her in-laws.
18. Right to life of a person gets infringed if he is vexed with frivolous criminal proceeding, therefore I am of the view that the petition of complaint pending before the learned Court of Judicial Magistrate, 1st Court, Siliguri is a manifestation of wrecking vengeance by the opposite party no. 2 against her husband and in-laws it is attended with *mala fide* and amounts to an abuse of process of law.

19. In my humble opinion, the petition of complaint should not be allowed to remain in force and should be quashed which I accordingly do.
20. The criminal revision is disposed of along with application, if any.
21. Let a copy of the judgement be sent to the learned Trial Court for information and necessary action.
22. Urgent photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)