

08.5.2023
Sl.45
Ct. No.3
SD

***CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri***

CRR 66 of 2023

In re: Piyali Mandal Majumder @ Madhumita Mandal

... petitioner.

Mr. Sanjay Mazoomdar

... for the petitioner.

Mr. Aditi Shankar Chakraborty

Mr. Nilay Chakraborty

... for the State.

This is an application under Section 482 of the Code of Criminal Procedure, directed against the order dated 17.02.2023 passed by the learned Judicial Magistrate, 1st Court, Jalpaiguri in connection with Maynaguri Police Station Case No.247 of 2012 corresponding to GR Case No.2764 of 2012 under Section 498A/494/506 of the Indian Penal Code whereby the learned Magistrate had dismissed the application filed by the petitioner for discharge under Section 239 of the Code of Criminal Procedure.

The petitioner contended that the opposite party no.2 lodged a false complaint against the present petitioner contending that she was married with one Raju Das on 18.5.1998. Since marriage she was treated with physical and mental cruelty by her husband for non-fulfillment of his further demand of dowry. Finding no other alternative, she along with her child returned to her paternal house. Now, she has got information that her said husband has married the present petitioner who is/was a widow. As soon as she received the information about her husband's re-marriage, she rushed to her in laws house and tried to make contact with her husband but she was threatened over phone by her husband that he will dissolve their matrimonial tie. She further alleged that presently she is living in a distress condition along with her child.

On the basis of such allegation, the investigation started and after completion of investigation, police has submitted charge sheet against the present petitioner as well as against the husband of defacto complainant (who is not the petitioner herein) under Section 498A/494/506 of the Indian Penal Code.

Mr. Mazoomdar, Learned counsel appearing on behalf of the petitioner submits that the petitioner is neither wife of the defacto complainant's husband nor the relative of her husband. In the charge sheet, police failed to provide any documentary evidence which can substantiate the alleged second marriage of the petitioner with the husband of the defacto complainant, so that the present case can attract Section 498-A of the Indian Penal Code.

He further submits that admittedly as per FIR the petitioner herein was a widow and as such, there cannot have any application of Section 494 of the Indian Penal Code against present petitioner. He further submits that the impugned proceeding against petitioner is a glaring example of abuse of process of court which if allowed, will amount to miscarriage of justice and misuse of law. The charge sheet has been submitted against the present petitioner in a pre-determined motive and as such, he prays for quashing the said proceeding.

Learned counsel appearing on behalf of the State submits that since the husband of the defacto complainant has married the present petitioner, so the petitioner is the present wife of her husband, who has also inflicted cruelty and as such, Section 498A attracts in the present case and as investigation ended in charge sheet, so the petitioner must face the trial. Accordingly, he has prayed for rejection of the prayer made by the petitioner.

I have gone through the FIR and other materials available in the record.

It appears from the FIR that the present petitioner has been described

by defacto complainant/opposite party no.2 as a widow and the defacto complainant has also stated in the FIR that her marriage with her husband since not been dissolved by a decree of divorce so, the husband has threatened the defacto complainant for filing suit for divorce.

Now, Section 494 of the Indian Penal Code deals with a situation where a wife having her husband living, married for the second time. In the present context, as per FIR the petitioner admittedly was/is a widow and as such, Section 494 cannot have any application in the present context.

So far as Section 498A is concerned, on perusal of the case diary as well as materials available in the record, there is nothing to show that the present petitioner is married with the husband of the defacto complainant nor there is any specific allegation against the present petitioner that she has inflicted any kind of mental or physical cruelty upon the defacto complainant. In this context, the Apex Court has laid down in ***Smt. Laxmi Devi vs. Satya Narayan & Ors.*** reported in ***(1994 AIR SCW 3408)*** that homa and saptapadi are the essential rites for a marriage according to the law governing the parties and if there is no evidence that these two essential ceremonies have been performed when the petitioner is stated to have married the husband of the defacto complainant, the factum of second marriage cannot be held to have been made out.

Even if for the sake of argument, if court comes to conclusion that there is any marriage with the petitioner, even then Section 498A does not attract in the present context, as there is no allegation of inflicting cruelty by the present petitioner any where in the record. Moreover petitioner cannot be treated as relative of complainant's husband in view of bar laid down in section 5 of the Hindu marriage Act, 1955.

From the statements and the materials collected during investigation,

the essential ingredients to attract Section 498A of the Code are completely absent in the present context. Beside adding a sentence casually at the end of FIR to attract another section, there is also no material which can support proceeding against the present petitioner under Section 506 of the Code.

The word “groundless” used in Section 239 refers to a situation where there is no ground for presuming that the accused has committed an offence. In the present case, as discussed above there is no cause for believing that the petitioner has committed offence either under Section 498A or 494 or 506 of the code. Moreover, Section 239 provides that examination of accused for the purpose of discharge under Section 239 is not imperative. If upon a consideration of all documents and other circumstances the court can come to a conclusion that the acquisition is without any substance, he may discharge the accused even without examining him. Examination becomes necessary when there are facts or circumstances in the documents, which go against the accused and which need explanation before framing charge. Here the materials on record including complaint prima facie reveals that allegations were leveled against principal accused, i.e., husband of defacto complainant and as such the court below ought to have held that the criminal prosecution against the present petitioner under the aforesaid section is not sustainable.

In the above backdrop, continuance of further proceeding against the present petitioner will be a sheer abuse of process of court as the chance of conviction of the present petitioner either under Section 498A or 494 or 506 of the Indian Penal Code is bleak.

In view of above, CRR 66 of 2023 is allowed.

Case diary be returned to public prosecutor at once.

The petitioner herein only is discharged from the Maynaguri Police Station Case No.247 of 2012 corresponding to GR Case No.2764 of 2012 under

Section 498A/494/506 of the Indian Penal Code pending before the learned Judicial Magistrate, 1st Court, Jalpaiguri.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)