

8.5.2023  
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Ct. no. 3  
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CALCUTTA HIGH COURT  
In the Circuit Bench at Jalpaiguri  
Appellate Jurisdiction

**CRR 84 of 2023**

**In the matter of :   Sumit Pandit & Ors.  
...petitioners**

Ms. Esha Acharya  
Mr. Soumyadeep Ghosh                      ...for the Petitioners

Mr. Aditi Shankar Chakraborty, Ld. APP  
Mr. Ujjwal Luksom                      ... for the State

Affidavit of service filed by the petitioner is taken on record. In spite of service, the opposite party no. 2 is not represented. Opposite party no. 1/State is represented.

The petitioners submit that the defacto-complainant was married with the petitioner no. 1 on 16<sup>th</sup> May, 2012. The petitioner no. 1 is the husband, petitioner no. 2 is the father-in-law and the petitioner no. 3 is the mother-in-law of the defacto-complainant. Petitioners' specific case is that a conspiracy has been hatched up by the complainant/opposite party no. 2 to implicate them in a false criminal case in order to evade the proceeding of a matrimonial suit, where the petitioners have prayed for declaration that the marriage is a nullity.

On the basis of a written complaint made by opposite party no. 2 herein, CR case no 168 of 2019 has been initiated

and pending under Sections 498A/323/506/34 of the Indian Penal Code. As per order-sheet, the trial is continuing and the P.W. 1/ complainant's evidence have been completed.

Now the petitioners submit that on a bare reading of the complaint, it would reveal that the allegations are out and out fabricated. She further submits that the opposite party no. 2, knowing fully well that that petitioner no. 1 herein had a fair chance of winning the matrimonial suit for decree of nullity of marriage have initiated the present complaint to harass the petitioners. The allegations made against the petitioners regarding the dowry demand is out and out false and the defacto-complainant/opposite party no 2 is trying to misuse a stringent law in a harassing manner. She further submits that according to the complaint, the complainant and the petitioner no. 1 herein shifted to the quarter allotted to the petitioner no. 1 and since October, 2018 the complainant has deserted petitioners. Accordingly, the present proceeding as against the petitioners are mere abuse of the process of the court and absolutely bad in law. She also submits that the allegations levelled against the petitioners are malicious and the contents of the first information report does not constitute any offence or make out any case against the petitioners. Accordingly, she has prayed for quashing the present proceeding. In this context, she relied upon a judgment in the case of **Kahkashan**

**Kausar alias Sonam Vs State of Bihar and Others reported in (2022) 6 SCC 599.**

I have perused the written complaint as well as the evidence of defacto complainant recorded by the court below as PW 1. Before going to further details, the allegations levelled against the petitioner may be reproduced from Paragraphs 5,6,7,8 and 9 of complaint and examination-in-chief which are quoted hereunder:

“5. That after the birth of our child I became the subject of physical and mental torture by all the accused persons. They started pressure upon me to bring rupees one lakh (Rs. 100000/-) from my widow mother but I refused to do the same as because it was beyond the capacity of my widow mother. Since then my father in law and mother in law started mental and physical torture upon me. All the accused persons used to abuse me by filthy language as well as they used to humiliate me by pulling my hair, slapping and also by insisting me to commit suicide so that after my death the accused no. 1 may marry again with dowry demand. That subsequently in the month of May, 2015 the accused no. 1 decided to shift me and my only child to his railway quarter which is mentioned in my cause title.

6. That thereafter I have been living along with my only child at the quarter of the accused no. 1. But the accused no. 1 has been living along with his parents and seldom visited me and minor child. The accused no. 1 started neglecting to maintain us since then. Sometimes the accused no.1 used to come to the quarter in drunken condition and always pressured upon me either to bring money from my parental house as claimed by the accused no.1 and his parents or to give divorce to him but I tried my best to continue my matrimonial life.

7. that in the year 2018 the torture upon me was increased, and also me and my child have not been providing any maintenance by the O.P. and on 23.10.2018 the O.P. assaulted me and abused me with dire consequences and left the quarter and never come back to us till filing of this case.

8. that I have told entire incident to my mother, i.e., witness no.1 and some of my friends and subsequently my mother, a widow aged lady went to the house of the accused persons for the purpose discussing about the solutions of problems but all the accused persons also humiliate my mother by using filthy language and straight way told her to arrange one lakh rupees (Rs.1,00000/-) otherwise it is not possible for accused no. 1 to continue his material tie with me and when my mother told that it was beyond of her capacity to arrange the said amount of money then all the accused persons said that I will be prepared to get notice of divorce very soon.

9. That since then I have been living at the quarter of my husband but the accused no. 1 is living at his house along with other two accused persons and I am not allowed to enter into the house of the accused persons. I am living along with my child with distress mental condition. Acute mental agony is the cause of delay of filing of this complaint.”

In the deposition, said defacto-complainant as PW 1 has stated in his cross examination as follows:

“At present I am residing at railway quarter of my husband accused no. 1 Sri Sumit Pandit in Alipurduar Junction. Our marriage was not solemnised at our paternal house. No complaint either at police station or court has filed by me after 23/10/2014. I can not say the particular dates in respect the statement given by me in para 5 of my chief. Thereafter I did not filed any complaint. I can not explained the filthy languages used by the accused and I also did not mentioned the same in my chief as they regularly tortured me upon my character. I did not filed any written complaint as I always tried to solve the matter between us and I only made a oral complaint to Junction police out post. In May 2015 I along with my husband shifted to his railway quarter as mentioned above. Thereafter my husband along with other accused reside in the address as mention in the cause title (Chechakhata, Shibbari, Alipurduar). All the maintenance of the quarter bear by my husband. I did not filed any complaint on the incident as mentioned in para 6 of my chief. Since may 2015 my husband used to reside with his parents at Chechakhata, Shibbari, Alipurduar and oftenly came to visit with me in his quarter. After 23/10/2018 I have filed a complaint which has given to my Ld. Counsel but did not produced the same today before the court and I also did not mentioned the same in my Chief as well as in my complaint. I cannot say the particular dates on which I have given my information about my torture to my mother and my friends. I did not filed any complaint on incident as written in para 8 and 9 of my chief. It is a fact that my husband has filed a divorce case against me but can not say whether it has filed previously before filing of this case or not. Not a fact I did not intent to lead a luxury life after my marriage. Not a fact as I love to spent time with my friends and it did not pressured upon my husband to live separately in his quarter. Not a fact as I want to live a luxury life due to such my husband filed a divorce case against me. Not a fact I have filed this case falsely in order to save myself from the divorce case filed by my husband. Not a fact the statement written in para no. 5,6,7 and 8 of my chief are false.”

From the aforesaid allegations it is quite clear that no specific and distinct allegations have been substantiated during examination of complainant which has been made

against the petitioners and also no specific role about alleged cruelty has been attributed against them. No medical document or any kind of document has been filed in support of allegation. The evidence as well as the written complaint suggest that the allegations are general and omnibus in nature and might have arisen due to matrimonial discord. Hence it would be total abuse of the process of law if the proceeding is allowed to be continued to consider whether there are still any material to hold that the trial should proceed against the petitioners in spite of absence of prima facie material constituting the offence alleged against the petitioners herein. Apex court on various occasions highlighted that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused and such an exercise must therefore be discouraged. This is apart from the fact that despite service of notice, the complainant neither appeared before this court nor engaged any counsel to represent her.

In **Kahkashan Kausar alias Sonam Vs State of Bihar and Others reported in (2022) 6 SCC 599**, the apex court has clearly held in paragraph 17, which may be quoted as under:

“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.”

In **State of Kerala Vs. L. Muriswami reported in (1977) 2 SCC 699** Supreme Court observed that the wholesome power under Section 482 entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of process of court or that ends of justice require that the proceeding ought to be quashed.

In **Preeti Gupta Vs. State of Jharkhand reported in (2010) 7 SCC 667**, Apex court has clearly observed that a court proceeding ought not be permitted to degenerate into a weapon of harassment or prosecution.

Since from the written complaint, as well as from the examination of PW 1/defacto-complainant and also from the cross examination, it appears that chances of an ultimate conviction of the present petitioners either under Section 498A or Sections 323/506/34 of the Indian Penal Code is bleak and as no useful purpose is likely to be served by allowing criminal prosecution to continue, I deem it just and legally appropriate to quash the proceeding initiated against the petitioners invoking power under Section 482 of the Code of Criminal Procedure.

In view of above, CRR 84 of 2023 is allowed.

Let all further proceedings of complaint case no. 168 of 2019 presently pending before the learned Additional Chief Judicial Magistrate, Alipurduar is hereby quashed.

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.)**