

16.10.2023
Item No.07
Ct.No.4
rc.

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

**C.R.R. No. 159 of 2023
with
CRAN No. 1 of 2023
and
CRAN No. 2 of 2023 (not found)**

In the matter of : **Gobinda Chanda**
Verus
The State of West Bengal & Ors.

Mrs. Esha Acharya	
Mr. Soumyadeep Ghosh	...For the petitioner
Mr. Aditi Shankar Chakraborty	
Mr. Niloy Chakraborty	... For the State

Despite service, the Opposite Party No. 2 is unrepresented.

This petition has been preferred at the instance of the accused/ petitioner with a prayer for quashing of the case registered as G.R.Case No. 373 of 2023 corresponding to Alipurduar Women Police Station Case No. 15 of 2023 dated 28th February, 2023 under Sections 498A/ 307/506 of the Indian Penal Code (in short, "IPC") read with Section 4 of the Dowry Prohibition Act, 1961, presently pending before the Court of the learned Additional Chief Judicial Magistrate, Alipurduar.

Mrs. Acharya, learned counsel appearing on behalf of the petitioner contends that in the case on hand, the FIR was lodged on the basis of a concocted story with an ulterior motive to harass the petitioner. She vociferously contends that the petitioner has been falsely implicated in the case with a mala fide attitude

and/or malicious intention. She further contends that although the FIR did not disclose any cause of action yet the investigating officer concerned has mechanically submitted charge sheet and the case has been committed to the learned trial court. She submits that if the trial is allowed to be continued, the same would be abuse of due process of law and the petitioner will be highly prejudiced. To buttress her submission, she places reliance upon the judgments delivered in the cases of State of Haryana & Ors. Vs. Bhajanlal & Ors. reported in 1992 Supp (1) Supreme Court Cases 335; Abhishek Vs. State of Madhya Pradesh reported in 2023/INSC/779; Kahkashan Kausar @ Sonam & Ors. Vs. State of Bihar & Ors. reported in (2022) 6 Supreme Court Cases, Page 599 and an unreported judgment passed on May 08, 2023 by a coordinate Bench of this Court in CRR No. 84 of 2023 (Sumit Pandit & Ors. Vs. State of West Bengal & Ors.).

Mr. Chakraborty, learned counsel for the State, vehemently opposes such prayer of the petitioner. He submits that whether or not the allegations contained in the FIR have substance can be decided by the learned Trial Court after taking evidence. He submits that the case was started under 498A/307/506 of the IPC read with Section 4 of the Dowry Prohibition Act, 1961. According to Mr. Chakraborty, the accused person allegedly committed heinous offence relating to the human body. Hence, in his view, it would not be just and proper to quash the proceedings and he prays for dismissal of the application.

Heard the learned counsel for the parties and peruse the materials placed before me.

Record reveals that on the basis of an FIR lodged by the O.P. no. 2, one Alipurduar Women P.S. case no. 15 dated 2023 dated 28.02.2023 under sections 498A/307/506 IPC read with S. 4 of the Dowry Prohibition Act was started. After completion of investigation, charge-sheet *vide.* no. 19 of 2023 dated 31.03.2023 under sections 498A/506 IPC read with 4 of Dowry Prohibition Act was submitted. Record postulates that the learned ACJM, Alipurduar has taken cognizance of the offences.

Section 482 of the Code of Criminal Procedure, 1973(in short, “the Code”) envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, i) to give effect to any order under the Code, ii) to prevent abuse of the process of Court and iii) to otherwise secure the end of justice.

Now in a catena of judgments the Hon’ble Supreme Court of India was pleased to lay down the guidelines under which circumstances the High Court can exercise of its inherent power for quashing the proceedings. The High Court in exercise of its inherent power can quash the criminal case arising out of a matrimonial dispute where the party have resolved their entire disputes. The Court may examine as to whether the possibility of conviction is remote and bleak. The Court can quash the case if it is found that continuation of the case would be abuse of due

process of the Court and extreme injustice would be caused if the case is not quashed.

In the given case, the disputes surfaced in the nuptial life of the petitioner and O.P. no.2 have not been resolved. A criminal case can be quashed if it is found that the allegations set out in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or where the factual contents of the FIR and the evidence collected do not disclose the commission of any offence but the Court shall not probe into the question whether the evidence is reliable or not. The allegations of *mala fide* against the complainant is of no consequence and cannot by themselves be the basis for quashing the case.

On studied scrutiny of the FIR, it cannot be concluded that the allegations set out therein do not constitute any offence. Allegation of *mala fide* may be relevant while judging the correctness of the allegations or while examining the evidence. Whether the allegation contained in the FIR are unfounded or not can be decided only after taking evidence. I am informed that the charge has not been framed as yet. Needless to observe that the learned Trial Court while framing the charge shall obviously scrutinize the materials on record and consider as to whether there are sufficient materials to frame charge against the accused person.

In the judgment of State of Haryana & Ors.Vs. Bhajanlal & Ors. (supra) the Hon'ble Supreme Court of India was pleased

to observe that power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Hon'ble Supreme Court was pleased to observe that the High Court will not be justified in embarking upon an enquiry as to the reliability or genuineness of the allegations set out in the FIR. Hence, the ratio of the judgment laid down in the case of State of Haryana & Ors. Vs. Bhajanlal & Ors. (supra) will not come in rescue of the petitioner. I have carefully peruse the other judgments relied upon by Ms. Acharya but those judgments are distinguishable in fact.

I do not find any material to infer that if the criminal case is allowed to be continued there would be abuse of due process of law and the accused person would be highly prejudiced and at this stage there is no material to lead me to infer that the possibility of conviction also very remote and bleak. Even keeping an eagle's eye on the FIR, it cannot be inferred that allegations set out therein do not constitute any offence and allegations of *mala fide* as made by Mrs. Acharya are not sufficient enough to lead the Court to quash the proceeding.

In view of such sequence of fact and enunciation of aforesaid principles of law, I do not find any justification to quash the case. Consequently, the revisional application being CRR No. 159 of 2023 and its connected applications are dismissed.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Partha Sarathi Chatterjee, J.)