

28.02. 2023  
item No.14  
n.b.  
ct. no.III

**In the High Court at Calcutta  
Circuit Bench at Jalpaiguri**

**CRR 278 of 2022**

**Biswajit Dutta  
Vs.  
The State of West Bengal & Anr.**

Ms. Suman Sehanabis(Mandal),  
..... for the petitioner.  
Mr. Aditi Shankar Chakraborty,  
Mr. Sourav Ganguly,  
.....for the State.

The revisional application has been preferred for quashing of the proceeding being CIS No. 52 of 2019 arising out of C.R. Case No. 87 of 2019 filed by the de facto complainant before the Court of the learned Judicial Magistrate at Tufanganj under Section 406 of IPC.

The present petitioner is the husband of the opposite party no.2. Affidavit of service shows that it was served upon the opposite party no.2 but no one represented on behalf of the opposite party no.2.

Learned advocate for the petitioner submits that after marriage between the parties there were matrimonial dispute. So, the present opposite party no.2 lodged a complaint before the concerned police station under Section 498A/307 IPC. In that case, the present petitioner as well as the other all in-laws were arrayed as accused persons. The same case was ended in acquittal. The present opposite party No.2 again lodged one application before the learned Judicial Magistrate under Section 125 of the Code of Criminal Procedure.

Learned advocate for the petitioner submits that the facts stated in the FIR under Section 498A/307 of the IPC is the same that of the present case. He further pointed out that the learned Sessions Judge has considered all materials on record and also after considering the fact of entrustment of Sridhan to the husband of the present petitioner and other in laws acquitted them all. She again pointed out that prayer of the other co-accused persons was allowed by this Court and the proceeding against the other in-laws was quashed by this court on 9.9.2022 in CRR No. 76 of 2022. The present petitioner being the husband was falsely implicated in this case. He further pointed out that the list of articles which was mentioned in the petition under Section 406 IPC was not correct and nothing has been entrusted to the present petitioner. Learned advocate for the petitioner further submitted before this Court that the case initiated under Section 498A/307 of the IPC has already been ended in acquittal and further continuation of the present case under Section 406 of the IPC. On the self same set of facts would be amount to be double jeopardy to the present petitioner. In support of her submissions she referred a decision reported in (2020)3 SCC 54; and argued that merely changing the Section shall not allowed the prosecution to impose double jeopardy upon the petitioner. He further pointed that the provision of Section 300 of the Code of Criminal Procedure wherein it has been enumerated that the person convicted or acquitted not to be tried for self-same offence for second time.

Learned advocate appearing on behalf of the State raised strong objection and submits before this Court that the initial case

was filed under Section 498A/307 of the IPC which was categorically investigated by the police and the mode of investigation and point to be considered in the case for offences enumerated under Section 498A/307 of the IPC. No investigation was conducted, so far as the offences for entrustment of Stridhan property is concerned. He further pointed that the Hon'ble Court has mentioned in the order dated 9.9.2022 in CRR 76 of 2022 that the Stridhan articles was not entrusted upon the other in-laws but the husband so the proceeding against them was quashed. The case of the present is totally separate. So the criminal proceeding cannot be quashed.

Heard learned advocates perused the materials on record, it is true that the initial case was ended with acquittal under Section 498A/307 of the IPC. The cruelty defined under Section 498A and the offence under Section 307 was duly considered by the learned Sessions Judge and on consideration of the fact and circumstances of that case and materials on record, learned Sessions Judge acquitted of the present petitioner. Though the wording of FIR of the present case is same to that of the previous case, but the fact to decide in this case is different to the previous case. It is true that no one shall escape to the fact of the present petitioner marriage with the present opposite party no.2, the fact of marriage between the same parties and in-laws automatically the same. However, the entrustment of the Stridhan articles upon the present petitioner was not considered by the learned Sessions Judge in deciding the case under Section 498A and 307 of the IPC.

Section 300 of the Code of Criminal Procedure is crystal clear to the fact that no person shall be tried again for the same offence but in this case the present petitioner facing the same charges of offence. The offence which was tried against the present petitioner under section 498A and 307 of the IPC and now he is facing he trial under Section 406 of the IPC. Furthermore, the page 2 of the order passed by this Court in CRR 76 of 2022 dated 9.9.2022 makes it clear that allegation in the complaint under Section 406 based upon the entrustment of Stridhan articles upon the present petitioner. However, considering the entire proceeding and also considering the judgment law which was cited by the learned advocate for the petitioner. It appears to me that the ratio of judgment of (2020)3 SCC 54 is not applicable in this case

Considering the same, I find no merit to entertain the case.

Accordingly, CRR 278 of 2022 is dismissed and disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

**( Subhendu Samanta, J.)**