

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 23 of 2024

Debasish Mondal

-vs.-

State of West Bengal & Anr.

Mr. Monish Sen,
Ms. Oisani Mukherjee.

...For the Petitioner.

Mr. Arun Naskar.

...For the Opposite Party no.2.

Mr. Debasis Roy,
Mr. Arijit Ganguly,
Mr. Sandip Kundu.

...For the State.

Reserved on : 26.02.2024.

Judgment on : 28.03.2024.

Tirthankar Ghosh, J:-

The present revisional application has been preferred by the petitioner challenging the continuance of Durgapur Police Station case no. 189 dated 03.05.2022 wherein the investigating agency on conclusion of investigation submitted charge-sheet under Section 498A/304B/406/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

The investigating agency in the charge-sheet has implicated 14 accused persons which includes the husband, father-in-law, mother-in-law, sister-in-laws (under both categories sisters of husband and wife of the brothers of the husband), elder brother of the father-in-law and his wife as also father of the wife of one of the brother-in-law.

The petitioner before this Court happens to be Debasish Mondal who is the father of Riya Mondal and the said Riya Mondal happens to be the wife of Arup Mondal who is brother of the deceased's husband.

The present case being Durgapur PS Case no. 189/2022 dated 03.05.2022 was registered for investigation under Sections 498A/304B/406/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, on the basis of a letter of complaint addressed to the Officer-in-charge Durgapur Police Station, A.D.P.C. by Subhas Bose father of the deceased Kasturi Ghosh (hereinafter referred to as 'the complainant'). It was alleged that the complainant's daughter deceased Kasturi Ghosh was married to Biswarup Mondal on 18th June, 2018. At the time of marriage as per demand of the accused persons, the complainant gave sum of Rs.5,00,000/- for purchase of different furnitures and fixtures and an additional sum of Rs.5,00,000/- for purchasing gold jewelleryes. After marriage her daughter went to her matrimonial home along with her husband, however, after one month of her marriage she was physically and mentally tortured by Biswarup Mondal, Tarun Kanti Mondal, Sutapa Mondal, Nirup Mondal, Swarup Mondal,

Priyanka Mondal, Alo Ghosh, Hiranmay Ghosh, Arup Kumar Mondal, Riya Mondal, Laxmi Rani Mondal, Tushar Kanti Mondal, Paramita Mondal and Debasish Mondal. She was abused, ill-treated and forced to work like a maid servant, as the accused persons while torturing her said that she comes from a humble background which do not match with their status. Her daughter tolerated such abuse and mental torture, however, her sister-in-law namely Alo Ghosh, husband Hiranmay Ghosh, elder brother-in-law Swarup Mondal and his wife Priyanka Mondal along with his uncle-in-law Tushar Kanti Mondal and another brother-in-law demanded a sum of Rs.10,00,000/- for their medicine business and threatened that in case she fails to bring such money they would kill and hang her. The complainant with his limited means could organise only Rs.3,00,000/- and handed over the same to those persons requesting them not to inflict further torture upon his daughter. After payment of such amount, for few days the accused persons kept calm and quite, however, they used to tease and insult her on trivial issues. A girl child was born out of the said wedlock on or about 13.04.2020 and after birth of the girl child her husband, father-in-law, mother-in-law and other inmates of the matrimonial home continuously tortured his daughter and often assaulted her. The accused persons also forced his daughter to come back to his house and threatened that in order to stay at the matrimonial home she is to bring more money. The deceased often expressed her apprehension that in case some more money is not paid to her in-laws, she may be murdered and hanged. On 23.04.2021 the accused persons after assaulting his daughter drove her out alongwith her child from

the matrimonial home and thereafter she was staying at his residence and on his request the accused persons came down at his residence for a settlement wherein they demanded that they would take back his daughter on condition that he would contribute for establishment of separate business for his daughter's husband. The complainant assured that to the best of his ability he would financially assist for establishing such separate business when the accused persons agreed. On 07.02.2022 the deceased's husband/complainant's son-in-law took his daughter along with the child to their residence. On 30.04.2022 at about 11.00 pm complainant's daughter rang him and stated over phone that if she is not taken to her parental home the accused persons may murder her. On 01.05.2022 at about 11.00 am, the deceased's father-in-law rang the complainant and told him that the complainant should immediately come as his daughter's health has deteriorated. Immediately on receipt of such information complainant along with his wife and younger daughter rushed to the matrimonial home of the deceased when they found that his daughter is not there and they were informed that she had been taken to Durgapur Sub-Divisional Hospital. None of the inmates of the matrimonial home were present. On reaching hospital they found that her daughter was dead, lying on a bed. The complaint alleged that there were several marks of injuries on the body of the deceased. The complainant, therefore, requested the police authorities to take steps against the inmates of the matrimonial home who inflicted physical and mental torture upon his daughter resulting in her unnatural death. The complainant

reiterated that as the demand of money could not be satisfied his daughter was forced to face such a situation.

The investigating agency on conclusion of investigation submitted charge-sheet relying upon 18 witnesses which included individuals like doctors, police personnel and officers. Number of documents were also relied upon, including seized materials/articles which were collected in course of investigation by the prosecution in order to prove its case.

Mr. Monish Sen, learned Advocate appearing on behalf of the petitioner submitted that the petitioner happens to be a distant relative being the father of one of the sister-in-law i.e. father-in-law of one of the brothers of the deceased's husband. As such, he had neither any say in the regular family affairs nor any role in physical or mental torture if at all being inflicted upon the deceased or there were any demand of dowry made by him from the complainant. The complainant in his emotions and in order to satisfy his grudge has roped in as many as 14 persons amongst whom the petitioner has completely different locus who may be an occasional visitor at the matrimonial home because his daughter has been given in marriage to one of the brothers of the deceased's husband. Further there is no specific allegations against the petitioner and by way of general omnibus allegations the petitioner has been implicated in the instant case and there are no materials which calls for a situation where the present petitioner should face the ordeal of a criminal trial.

On the other hand learned Advocate appearing for the private/opposite party no.2/complainant submitted that the petitioner falls within the definition of relation of the husband and as the incident has happened within 7 years of marriage the petitioner should face the criminal trial as charge-sheet has already been submitted before the jurisdictional Court. It has been further submitted that prior to framing of charge it would be premature to interfere and the trial should be taken to its logical conclusion. Additionally it has been submitted that even if the petitioner is not convicted under Section 304B of the Indian Penal Code he may be convicted for violating the provisions of Section 302 or Section 306 of the Indian Penal Code. Learned Advocate for the complainant has also submitted that there is a statement under Section 164 of the Code of Criminal Procedure and the case is not restricted to the statement of the witnesses only under Section 161 of the Code of Criminal Procedure. So far as the question of 'relative' is concerned once the accused has been named in the FIR and the parties being hindus, the petitioner should face the trial.

Learned Advocate for the State has produced the Case Diary and submitted that the investigating agency in course of investigation has collected materials and on the basis of the materials so collected they have arrived at a conclusion and on that basis the petitioner has been named in the charge-sheet.

I have taken into account the submissions made by the learned Advocate for the petitioner, that of the complainant/opposite party no.2 as well as the

State. As the charge-sheet has already been submitted in connection with the instant case and I find that the investigating agency has relied upon 18 witnesses, I am of the view that considering the relationship which was existing between the present petitioner and the deceased, the complicity of this petitioner in relation to the offences is required to be assessed as in the FIR there was no specific allegations made against the present petitioner, although he was named along with other 13 accused persons who were relatives of the husband of the deceased.

I have considered the materials available in the Case Dairy which were relied upon by the prosecution to submit their report under Section 173 of the Code of Criminal Procedure and which incorporated 18 witnesses along with list of documents. For the sake of convenience the witnesses referred to are described as charge-sheet witnesses (CSW). CSW1, Subhash Ghosh, complainant and father of the deceased; CSW2, Keya Ghosh, mother of the deceased; CSW3, Biplab Kumar, maternal uncle of the deceased; CSW4, Parimal Biswas, Sub-Inspector of police; CSW5, Dayamay Ghosh, servant working at the matrimonial home of the deceased; CSW6, Sadesh Mishra, servant working at the matrimonial home of the deceased; CSW7, Subhash Kumar, maternal uncle of the deceased; CSW8, Banshi Badan Karmakar, Sub-Inspector of Police; CSW9, Subhash Mukhopadhyay, priest who performed the rites at the time of marriage; CSW10, Dulal Paramanik, barber; CSW11, Goutam Das, ASI of police; CSW12, Naba Kumar Majumdar, seizure witness who seized from doctor for preservation of viscera; CSW13, C/1063 Purna Ch.

Mondal, constable and witness relating to re-seizure; CSW14, Sourav Mondal, neighbour; CSW 15, Avijit Hazra, driver of the vehicle who took the deceased to the hospital; CSW16, Dr. Suvajit Ray, medical officer; CSW17, Sovan Saha, Sub-Inspector of police who recorded the FIR and CSW18, Deep Narayan Mondal, Sub-Inspector of police and investigating officer of the case.

Ordinarily it is not required to deal with each and every statement at the stage when the petitioner approached this Court but having regard to the nature of relationship which existed between the present petitioner, the deceased and her matrimonial home this Court felt that the statements of the witnesses require an assessment who were associated with the deceased. CSW1, Subhash Ghosh in the complaint gave the list of relations which included 14 accused persons, in order to describe the persons who are involved in the alleged offences under Sections 498A/304B/406/34 of the Indian Penal Code. Although, there were overtacts explained in respect of the other persons, there was no manner of participation of the present petitioner attributed in the letter of complaint or in the subsequent statement under Section 161 of the Code of Criminal Procedure which this witness divulged, in fact, the name of the petitioner was lastly incorporated as a relation. CSW2, Keya Ghosh, mother of the deceased in her statement before the police officer repeated in same words what was stated by the complainant and her husband, however, in her statement under Section 164 of the Code of Criminal Procedure she did not refer to this petitioner. In fact, in her statement under Section 164 of the Code of Criminal Procedure she referred to the husband of the deceased's mother-in-

law, father-in-law, sister-in-law, brother-in-law, elder brother of the father-in-law and his two sons and their wives and also the daughters of their husband. However, the petitioner's name do not appear in the four corners of the statement under Section 164 of Cr.P.C. recorded by the learned Judicial Magistrate. CSW3, Biplab Kumar, maternal uncle of the deceased whose statement is reiteration of that of the complainant. CSW5, Dayamay Ghosh and CSW6, Sadesh Mishra, who were the servants working at the matrimonial home of the deceased and who referred to the persons who inflicted torture are the husband, father-in-law, mother-in-law, brother-in-law, elder brother of the father-in-law and her wife and his son and vaguely upon other relations without naming the relations or their identity. CSW7, Subash Kumar is the maternal uncle of the deceased who reiterated the complaint. CSW9, Subhash Mukhopadhyay, is the priest who performed the rites at the time of marriage and he expressed in his statement that he heard regarding the deceased being tortured by her husband and the inmates of her matrimonial home which resulted in her death. CSW 10, Dulal Paramanik who was the barber at the time of marriage stated that he heard that the deceased was tortured by her husband and the inmates of her matrimonial home. CSW14, Sourav Mondal is a neighbour at the locality of the matrimonial home of the deceased who stated that the relations used to attend and come at the matrimonial home of the deceased. The witness also stated that often he heard about some hue and cry happening at the residence of the matrimonial home of the deceased. He further stated that her husband, father-in-law, mother-in-law, sister-in-law,

elder brother of the father-in-law, their sons and wives and other relations are also involved. CSW 15, Avijit Hazra, is a driver who drove the vehicle for taking the deceased to the hospital wherein her husband and others accompanied her.

The Hon'ble Supreme Court in cases relating to dowry death and matrimonial disputes has reiterated regarding the role of the Courts while proceeding against distant relative. To that effect in K. Subba Rao and Anr. – Vs. – State of Telangana represented by its Secretary, Department of Home and Ors. reported in (2018) 14 SCC 452, it has been held as follows:

“5. A perusal of the charge-sheet and the supplementary charge-sheet discloses the fact that the appellants are not the immediate family members of the third respondent/husband. They are the maternal uncles of the third respondent. Except the bald statement that they supported the third respondent who was harassing the second respondent for dowry and that they conspired with the third respondent for taking away his child to the U.S.A., nothing else indicating their involvement in the crime was mentioned. The appellants approached the High Court when the investigation was pending. The charge-sheet and the supplementary charge-sheet were filed after disposal of the case by the High Court.

6. Criminal proceedings are not normally interdicted by us at the interlocutory stage unless there is an abuse of the process of a court. This Court, at the same time, does not hesitate to interfere to secure the ends of justice. See State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . The courts should be careful in proceeding against the distant

relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out. See Kans Raj v. State of Punjab [Kans Raj v. State of Punjab, (2000) 5 SCC 207 : 2000 SCC (Cri) 935] and Kailash Chandra Agrawal v. State of U.P. [Kailash Chandra Agrawal v. State of U.P., (2014) 16 SCC 551 : (2015) 3 SCC (Cri) 536]”

The aforesaid paragraphs were approved by a subsequent judgment of the Hon’ble Supreme Court in Kahkashan Kausar alias Sonam and Anr. –Vs. – State of Bihar and Ors. reported in (2022) 6 SCC 599.

The present petitioner happens to be the father of the wife of one of the brother-in-law. To bring him within the ambit of the relations referred to without any specific incident of torture being inflicted upon the deceased would be asking him to face the ordeal of the whole criminal trial. The nature of the relationship according to this Court falls within the ambit of “distant relative” as has been referred to by the judgment of the Hon’ble Supreme Court in K. Subba Rao (supra) and Kahkashan Kausar alias Sonam (supra). The continuation of the proceedings as such without any specific allegations against this particular petitioner who happens to be a distant relation would result in an abuse of the process of law and as such further continuance of the proceedings so far as the petitioner is concerned being Durgapur Police Station case no. 189 dated 03.05.2022 (GR 758/2022) under Sections 498A/304B/406/34 of the Indian Penal Code and Sections 3/4 of the Dowry

Prohibition Act which is pending before the learned ACJM, Durgapur including the charge-sheet submitted therein against this petitioner should be and is hereby quashed.

So far as the other accused persons are concerned they have not been dealt with in this revisional application as they were not before this Court and as such the proceedings against them would progress in accordance with law.

Thus, CRR 23 of 2024 is allowed.

The petitioner should be discharged from the bail bonds.

Pending connected applications, if any, are consequently disposed of.

Case Diary be returned to the learned Advocate for the State.

Department is directed to send copy of this judgment to the learned ACJM, Durgapur or the jurisdictional Court in seisin of the matter.

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

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities. .

(Tirthankar Ghosh, J.)