

13.11.2024.
19.
Ct. No.237
Bd.

CRR 369 of 2018

Vivekananda Das
-vs-
The State of West Bengal & Anr.

Mr. Nilarnab Paulfor the petitioner.

Mr. Rana Mukherjee
Mr. Pravas Bhattacharya ... for the State

This application pertains to a prayer made by the petitioner/accused, who has sought for quashing of proceedings in connection with Baisanabnagar Police Station Case No. 758/17 dated 12.10.2017 under sections 498A/494/34 of Indian Penal Code corresponding to GR No. 4557/17, presently pending before learned Chief Judicial Magistrate, Malda.

Petitioner was married with the opposite party no. 2/de-facto complainant in the year 2003 and according to the petitioner, the matrimonial life was not peaceful and as a result thereof, the opposite party no. 2, left her matrimonial home on her own accord on 20.01.2010. Further case of the petitioner is that several attempts of reconciliation was made but it yielded no fruitful result and as such petitioner was compelled to file a suit for dissolution of marriage on the ground of desertion. Said suit was ultimately decreed ex-parte on 13.09.2013. Thereafter, the opposite party no. 2/wife herein made a prayer for setting aside the ex-parte decree dated 13.09.2013. However, it stood rejected by the order of the Court on 18.11.2014. No appeal was preferred against that order and as such, the order of dissolution of marriage dated 13.09.2013 attained its finality. The

petitioner herein married another lady after dissolution of marriage and presently he is residing peacefully with newly married wife. Petitioner submits that in spite of aforesaid background the opposite party no. 2 has initiated the instant proceeding only to wreck vengeance upon the petitioner and with the sole intention to willfully disturb the new matrimonial life of the petitioner who is now even father of a minor child. Accordingly, he submits that if the present proceeding is allowed to be continued it will result abuse of the process of the Court.

Opposite party is not represented in spite of service.

Learned counsel appearing on behalf of the State placed the case diary and he left the matter to the discretion of the Court.

I have considered the submissions made by the parties and also perused the materials in the case diary. From the FIR it is clear that complainant/opposite party no. 2 has lodged FIR four years after she was allegedly driven out from her matrimonial house. She has not stated anything that she had lodged any complaint anywhere during last four years alleging torture or mental cruelty.

Under the provision of section 468(2) of the Cr.P.C., for offences punishable not more than three years, the limitation period is three years and in the present case admittedly complaint lodged four years after alleged cause of action and since offence punishable under section 498A prescribes maximum punishment for three years, the allegation under section 498 A of IPC is clearly barred by limitation. Subsequent allegation if any, also not maintainable as when she made such complain, she is no longer the wife of

petitioner and as such she has no locus to lodge complain under section 498 A IPC which mandates that such complain can be lodged by a wife and not by a divorced lady.

Petitioner's specific case is he entered in the present marital relationship after obtaining divorce lawfully from a competent court of law. There is no denial of such fact from the opposite parties. Accordingly, the allegation of bigamy punishable under section 494 of IPC, whose essential element lies in the fact that one must marry for the second time during the subsistence of one's first marriage, is conspicuously absent in the present case.

On bare perusal of complaint it appears that the complainant in her FIR suppressed the fact of divorce, though she was aware of the same since the year 2013, when her prayer for setting asided exparte decree was rejected. Moreover, written complain does not contain any specific allegation of any act of cruelty which is enough to cause danger to the life or limb of the informant or enough to drive her to commit suicide.

The Apex Court in ***Madhavrao Jiwaji Rao Scindia & Ors. _vs- Sambhajirao Chandrojirao Angre & Ors. , AIR 1988 SC 709 held:***

“The legal proposition is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which at a preliminary case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court

cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quashed the proceeding even though it may be at a preliminary stage.”

On perusal of the case diary it further appears that during investigation police has recorded only the statements of priest, barber and two neighbours who have made evasive statements about the allegation. There are no other incriminating materials in the case diary which can suggest in favour of continuance of the proceedings against the present petitioner either under section 498A or under section 494 I.P.C.

In view of the above, when the ingredients of the offences complained of is not made out from the written complaint and where the chances of conviction in the long run is extremely bleak and where the proceeding has been initiated by an unhappy lady for vexing and wrecking vengeance upon the petitioner, I find that any further continuance of the present proceeding against the present petitioner before the court below will be a serious abuse of the process of the Court.

In such view of the matter, CRR 369 of 2018 is allowed.

The impugned proceeding being GR No. 4557/17 now pending before the learned Chief Judicial Magistrate, Malda, is quashed qua the petitioner, Vivekananda Das.

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

(Dr. Ajoy Kumar Mukherjee, J.)