

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1834 of 2019

Unus Ali Gayen & Ors.

Vs

The State of West Bengal & Anr.

For the Petitioners : Mr. Amal Krishna Samanta,
Mr. Arun Kr. Das.

For the State : Ms. Rita Dutta.

For the Opposite Party No. 2 : None.

Hearing concluded on : 10.01.2024

Judgment on : 19.01.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding being C.R. Case No. 359/2018 under Sections 498A/494/34 of the Indian Penal Code and Section 3/4 Dowry Prohibition Act, pending before the Court of Learned Chief Judicial Magistrate, Purba Medinipur at Tamluk.
2. In spite of due service at the address at Kolkata, there is no representation on behalf of the opposite party no. 2.
3. The Complainant filed a Complaint with **Panskura Police Station** on 05.10.2016 to the effect that her marriage had been solemnized with the petitioner no.1 and then cruelty being inflicted by the petitioners. Police registered **Panskura P.S. Case No. 472/2016** under Sections 498A/34 IPC and 4 D.P. Act and Charge Sheet in the said case was filed on 26.11.2016.
4. On 27.11.2018, the Complainant herein filed a **Complaint case** being **CR 359/2018** alleging offence under Sections 498A/494/34 of IPC & 3,4 D.P. Act. The Magistrate took cognizance and issued summons and the said case is pending execution of warrant of arrest against the petitioners.
5. The present revision has been preferred praying for quashing of the complaint case.

6. The Complainant's case is that, as the petitioner was unable to meet the dowry demand, she and her child were driven out of the Matrimonial home on 05.10.2016 and **she filed the case with Panskura Police Station in which she also stated about her husband marrying for the 2nd time.**
7. The said complaint case is pending trial. Now it appears that after 2 years, the complainant has filed another case, against the petitioner on the basis of the self same allegations.
8. It appears that the complainant has not mentioned the pending Police Case in her petition of Complaint in the C.R. Case.
9. In **Kapil Agarwal & Ors. Vs Sanjay Sharma & Ors., Criminal Appeal No. 142 of 2021, on 01.03.2021**, the Supreme Court held:-

“5. We have heard the learned counsel for the respective parties at length.

It is the case on behalf of the appellants that as on the same allegations, the private respondent-complainant has filed an application under Section 156(3) Cr.P.C., which is pending before the learned Magistrate, the impugned FIR with the same allegations and averments would not be maintainable, and therefore, the FIR lodged with the police station Loni Border, District Ghaziabad deserves to be quashed and set aside. The aforesaid cannot be accepted for the simple reason that Code of Criminal Procedure permits such an eventuality of a complaint case and enquiry or trial by the Magistrate in a complaint case and an investigation by the police pursuant to the FIR. At this stage, Section 210 Cr.P.C. is required to be referred to, which reads as under:

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence – (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or

trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation. (2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. (3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”

Thus, as per Section 210 Cr.P.C., when in a case instituted otherwise than on a police report, i.e., in a complaint case, during the course of the inquiry or trial held by the Magistrate, it appears to the Magistrate that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation. It also provides that if a report is made by the investigating police officer under Section 173 Cr.P.C. and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. It also further provides that if the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of Cr.P.C.

Thus, merely because on the same set of facts with the same allegations and averments earlier the complaint is filed, there is no bar to lodge the FIR with the police station with the same allegations and averments.

6. However, at the same time, if it is found that the subsequent FIR is an abuse of process of law and/or the same has been lodged only to harass the accused, the

same can be quashed in exercise of powers under Article 226 of the Constitution or in exercise of powers under Section 482 Cr.P.C. In that case, the complaint case will proceed further in accordance with the provisions of the Cr.P.C.

6.1 As observed and held by this Court in catena of decisions, inherent jurisdiction under Section 482 Cr.P.C. and/or under Article 226 of the Constitution is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. **When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon accused, in exercise of inherent powers, such proceedings can be quashed.**

6.2 As held by this Court in the case of *Parbatbhai Aahir v. State of Gujarat* (2017) 9 SCC 641, Section 482 Cr.P.C. is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any Court; or (ii) otherwise to secure the ends of justice. Same are the powers with the High Court, when it exercises the powers under Article 226 of the Constitution.

8. We are not expressing anything on merits whether, any case is made out against the appellants for the offences alleged in 156(3) Cr.P.C. application as the same is pending before the learned Magistrate and the learned Magistrate is to take call on the same. Therefore, when the impugned FIR is nothing but an abuse of process of law and to harass the appellants-accused, we are of the opinion that the High Court ought to have exercised the powers under Article 226 of the Constitution of India/482 Cr.P.C. **and ought to have quashed the impugned FIR to secure the ends of justice.”**

10. In the present case the case based on Police Report which ended in Charge Sheet is pending trial.
11. The present Complaint case being CR Case No. 359 of 2018 under Section has been initiated on the self same allegations **after two years** of registration of FIR and is clearly an abuse of process of law and filed only

to harass the petitioner herein and the facts on which the present case has been filed are also part of the complaint filed with the police two years earlier.

12. Accordingly CRR 1834 of 2019 is allowed.

13. Accordingly in the interest of justice and to prevent abuse of process of law, the proceeding being C.R. Case No. 359/2018 under Sections 498A/494/34 of the Indian Penal Code and Section 3/4 Dowry Prohibition Act, pending before the Court of Learned Chief Judicial Magistrate, Purba Medinipur at Tamluk **is hereby quashed.**

14. This Court has not gone into the merits of the allegations.

15. The Learned Magistrate to proceed with the trial in Panskura, P.S. case no. 472/2016 in accordance with law.

16. All connected Applications, if any, stand disposed of.

17. Interim order, if any, stands vacated.

18. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

19. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)