

CRR 2543 of 2022

**Asiya Bibi @ Asia Bibi & Ors.
Vs.
The State of West Bengal & Anr.**

Mr. U.A. Dewan
Mr. Asif Dewan ...for the Petitioners

Mr. Madhusudan Sur, Ld. APP
Mr. Dipankar Paramanick ...for the State

This is an application wherein the petitioners have prayed for quashing of the impugned proceeding being GR case no. 2025 of 2021 arising out of Samsorganj Police Station case no. 324 of 2021 dated 11.10.2021.

The petitioner contended that the petitioner no. 1 is the mother-in-law of the complainant and the petitioner no. 2 is the brother-in-law of the complainant. The petitioner nos. 3 and 4 are married sister-in-law who are residing with the family members at their in laws house respectively.

It is submitted by the petitioners that the complainant lodged a written complaint alleging that 11 years back, marriage was solemnized between the complainant Naseba Khatun and Imtiaj Hossain and due to said wedlock, two female child were born. It is further alleged that the husband of the complainant along with his family members demanded Rs. 1,30,000/- from the parents of the complainant but as the parents of the complainant are very poor, they managed to pay Rs. 5,000/- to the husband of the complainant. It is further alleged that the accused persons did not provide proper food to the complainant and sometimes she was

kept confined in a room. The husband of the complainant threatened the complainant to kill her if the demand of Rs. 1,30,000/- is not paid. On 11.10.2021 at about 7 A.M. in presence of the mother of the complainant, all the accused persons assaulted the complainant.

Learned counsel for the petitioners submits that before registering the instant case on 7.10.2021 at about 5 A.M. the father-in-law of the complainant namely, Alauddin Biswas died and before his demise his property was gifted in favour of his wife, Asiya Bibi who is petitioner no. 1 in the instant application. After receiving such information on 10.10.2021 the complainant namely Nashiba Bibi became furious and assaulted Asiya Bibi when the husband of the complainant and her brother in law went to the local market to purchase funeral articles. Local people rescued Asiya Bibi from the clutch of Nashiba Bibi who openly threatened her to implicate the family members of Asiya Bibi by lodging false complaints. It is evident that thereafter Nashiba Bibi left the house of her husband and she lodged complaint before the Executive Magistrate under Section 107 of the Code of Criminal Procedure who took cognizance.

After completion of investigation, in the instant case police submitted charge-sheet under Sections 498A/324/34 of the Indian Penal Code read with section 3 & 4 of the Dowry Prohibition Act. The main grievance ventilated by the petitioners is that without making proper enquiry, charge sheet has been submitted against the petitioners. The police did not take notice about fact that the complainant and his husband and the children residing separately in a separate mess from the petitioners house and the petitioners are totally innocent. Relying

upon the judgment reported in **Vineet Kumar and Others Vs. State of Uttar Pradesh and Another** reported in **(2017) 13 SCC 369**, he contended that in paragraph 102 of the Bhajanlal's case it has been made clear that the criminal proceeding is liable to be quashed if it is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. Accordingly, the petitioners have prayed for quashing of the proceeding.

Learned counsel for the State placed the case diary and has drawn my attention at page no. 19 of the case diary which relates to injury report and also the statement recorded by police under Section 161 of the Code in page 6 to 11. He further contended that the written complaint as well as materials available in the case diary discloses cognizable offences and the investigation has also been culminated into a charge sheet and for which it would not be proper to quash the present proceedings at its threshold.

I have considered the submissions made by both the parties and perused the contents of the written complaint as well as the materials available in the case diary, where from it appears that the materials in the case diary discloses allegation of committing cognizable offence by the petitioners which involves fair question of trial. While deciding an application of quashing the proceeding court is not supposed to evaluate the truthfulness or otherwise levelled by the complainant and his witnesses against the petitioner. The allegation of the petitioner that the complaint might have been initiated out of malice is not in itself ground for quashing the criminal proceeding, if the materials available in record otherwise justify continuance of the proceeding. Allegations

of malice or *malafides* may be relevant while examining the evidence during trial but the mere fact that the complainant is guilty of *malafides* would not be a ground for quashing the prosecution. In the present case specific averments of allegation against petitioner have been made in complaint and the statements.

In a catena of decisions, it has been held that exercise of power under section 482 Cr.P.C. to quash a criminal proceeding arises only when the allegations made in the FIR or the materials collected during investigation do not constitute the ingredients of the offences alleged. In fact interference by the High Court under section 482 Cr.P.C. is to prevent the abuse of process of any court or otherwise to secure the ends of justice, but if a prima facie case is made out disclosing ingredients of the offence alleged against the accused, the High Court is not expected to quash a criminal proceeding.

In view of aforesaid discussion, I find that it is not a fit case for quashing the impugned proceeding.

CRR 2543 of 2022 is accordingly dismissed.

Urgent Photostat certified copy of the order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)