

08.07.2024
rc/ct.no.34
Item No.15

**CRR No. 2515 of 2023
with
CRAN No. 1 of 2023**

In the matter of : Biswanath Sen & Anr.

.....Petitioners

Mr. Jayanta Narayan Chatterjee
Ms. Paramita Mukhopadhyay
Mr. Supreem Naskar
Ms. Jayashree Patra
Ms. Pritha Sinha

...for the Petitioners

Mr. Akashdeep Mukherjee
Mr. Sayan Banerjee

....for the O.P.No.2

Mr. Debasish Roy, Ld. P.P.
Mr. Imran Ali
Ms. Debjani Sahu

...for the State

Mr. Navanil De

...for the O.P.No.2
(Appointed through Legal Aid,
High Court, Calcutta)

Mr. Navanil De, learned counsel was appointed by the High Court Legal Service Authority to represent the 2nd Opposite Party in this matter. Since the 2nd opposite party has appointed her own counsel, Mr. Navanil De, learned counsel, be discharged.

By consent of the parties, the revisional application being CRR No. 2515 of 2023 is taken up for consideration along CRAN No. 1 of 2023.

Heard learned counsels for the parties.

Learned counsel for the petitioners submits that an earlier complaint was lodged by the private opposite party under Section 156(3) of the Code of Criminal Procedure which was registered as

G.R.Case No. 4163 of 2020. Charge was framed against the petitioners and others under Sections 498A, 506 and 34 of the Indian Penal Code. The petitioners were acquitted from the charges therein by a judgment delivered on July 14, 2022. Soon thereafter, the present complaint was lodged by the private opposite party on November 06, 2022 wherein the opposite party has stated that the petitioners who are her husband and brother-in-law entered into her room and started keeping their belongings therein. On protest of the opposite party, the 1st petitioner abused her in filthy language, pushed her to the ground and tried to strangle her. She has stated that she stays alone in the house.

Charge sheet has been submitted in this case under Sections 498A, 323 and 34 of the Code. Learned counsel submits that no ingredient of offence under Section 498A has been made out against the petitioners. Copy of the injury report has not been made over to the petitioners and there is no allegation whatsoever against the 2nd petitioner either in the complaint or in the evidence of the witnesses recorded under Section 161 of the Code of Criminal Procedure.

Learned counsel for the 2nd opposite party/ defacto complainant submits that she was assaulted by the 1st petitioner and the son of the parties has stated in his statement under Section 161 of the Code about the alleged incident which is sufficient to substantiate the charges against the petitioners.

Learned counsel for the State refers to the Case Diary, particularly the statement of the private opposite party made

before the doctor and submits that a fresh cause of action has arisen after acquittal of the petitioners in the earlier case.

I have considered the material available on record as well as submission made on behalf of the parties.

No allegation, either under Section 498A or under Section 323 of the Code has been made out against the 2nd petitioner who is the brother-in-law of the private opposite party, either in the complaint or in the statement of witnesses recorded under Section 161 of the Code. Almost identical allegations were made by the private opposite party against the 1st petitioner in the earlier case which ended in acquittal of the petitioners by a judgment delivered on July 14, 2022. In the present case, statement of son of the private opposite party and the petitioner was recorded under Section 161 of the Code and the son has stated that there was an initial altercation between the 1st petitioner and himself and thereafter, his father pushed his mother who fell towards the wall and was taken to the hospital for treatment. The private opposite party, on the other hand has stated in her complaint that she stays in her house alone. Therefore, the presence of the son at the time of the alleged incident is doubtful.

The injury report describes the nature of injury to be simple and the cause of injury as allegedly stated by the private opposite party before the doctor and recorded in the injury report has not found place either in the complaint or during investigation.

The petitioners were acquitted of charges under Sections 498A/506 of the Indian Penal Code in the earlier matter. No

ingredient of offence under Sections 498A/323 of the Code has been made out against the 2nd petitioner in the present case. However, though there is no prima facie ingredient under Section 498A of the Code against the 1st petitioner herein, a prima facie case appears to have been made out against him under Section 323 of the Code.

In view of the above, the revisional application being CRR No. 2515 of 2023 is allowed in part.

Further proceedings of G.R.Case No. 10654 of 2002 pending before the learned Additional Chief Judicial Magistrate, Barrackpore qua the 2nd petitioner be quashed.

The proceeding qua the 1st petitioner shall continue under Section 323 of the Indian Penal Code.

Case Diary be returned.

The connected application being CRAN No. 1 of 2023 is disposed of accordingly.

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

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

(Suvra Ghosh,J)