

29.01.2024

Sl. No.56.

Mithun.

Ct.No.237.

CRR/2860/2018
With
IA No: CRAN/1/2023, CRAN/2/2023
Krishnendu Nandi & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Sabir Ahmed,
Mr. Subhankar Chakraborty,
Ms. Ruchira Manna,
Ms. Tasnim Ahmed

...for the petitioners.

Ms. Arunima Das Sharma

...for opposite party No.2.

Mr. Bidyut Kumar Roy,
Mr. Subham Bhagat

...for the State.

Both the learned Advocates on behalf of the petitioners as well as opposite parties are present.

Compromise petition being CRAN No.2 of 2023 was filed for quashing of the proceeding in connection with G.R. Case No.275 of 2018 arise out of Arambagh Police Station Case No.138 of 2018 under Section 498A/406/307 of the Indian Penal Code. After investigation charge-sheet was submitted under Section 498A/323 of the Indian Penal Code.

Learned Advocates appearing for the parties to the revisional application have prayed for quashing the proceeding in connection with G.R. Case No.275 of 2018 pending before the Court of Additional Chief Judicial Magistrate at Arambagh, District: Hooghly.

One report has been submitted by the Superintendent of Police, Hooghly Rural Police District in compliance with the order passed by this Court on 17.01.2024.

After hearing the learned Advocates appearing on behalf of the parties as well as the State, I find that the dispute between the parties

has already been patched up which has been further substantiated by a self-declaration made by opposite party No.2 of the revisional application as well as party to the joint petition being No.CRAN 2 of 2023, obtained by the Superintendent of Police, Hooghly Rural Police District.

Though initially the case was registered under Sections 498A/406/307 of the Indian Penal Code, ultimately charge-sheet was submitted under Section 498A/323 of the Indian Penal Code.

Though the offence under Section 323 of the Indian Penal Code is compoundable one but the offence punishable under Section 498A of the Indian Penal Code is not compoundable.

In support of compromise between the parties, Mr. Ahmed appearing on behalf of the petitioner has relied on a case of **Rajesh Sharma & Ors. Vs. State of Uttar Pradesh & Anr.** reported in **(2018) 10 SCC 472** and he referred Paragraph Nos.15 to 22 which are quoted hereinunder:-

“15. Following areas appear to require remedial steps:

- (i) Uncalled for implication of husband and his relatives and arrest.*
- (ii) Continuation of proceedings in spite of settlement between the parties since the offence is non-compoundable and uncalled for hardship to parties on that account.*

16. Function of this Court is not to legislate but only to interpret the law. No doubt in doing so laying down of norms is sometimes unavoidable. Just and fair procedure being part of fundamental right to life, interpretation is required to be placed on a penal provision so that its working is not unjust, unfair or unreasonable. The Court has incidental power to quash even a non-compoundable case of private nature, if continuing the proceedings is found to be

oppressive. While stifling a legitimate prosecution is against public policy, if the proceedings in an offence of private nature are found to be oppressive, power of quashing is exercised.

17. We have considered the background of the issue and also taken into account the 243rd Report of the Law Commission dated 30-08-2012, 140th Report of the Rajya Sabha Committee on Petitions (September 2011) and earlier decisions of this Court. We are conscious of the object for which the provision was brought into the statute. At the same time, violation of human rights of innocent cannot be brushed aside. Certain safeguards against uncalled for arrest or insensitive investigation have been addressed by this Court. Still, the problem continues to a great extent.

18. To remedy the situation, we are of the view that involvement of civil society in the aid of administration of justice can be one of the steps, apart from the investigating officers and the trial courts concerned being sensitised. It is also necessary to facilitate closure of proceedings where a genuine settlement has been reached instead of parties being required to move the High Court only for that purpose.

19. Thus, after careful consideration of the whole issue, we consider it fit to give the following directions:

19.1. In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.

19.2. The Committees may be constituted out of paralegal volunteers/social workers/retired persons/wives of working officers/other citizens who may be found suitable and willing.

19.3. The Committee members will not be called as witnesses.

19.4. Every complaint under Section 498-A received by the police or the Magistrate be referred to and looked into by such Committee. Such Committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.

19.5. Report of such Committee be given to the authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.

19.6. The Committee may give its brief report about the factual aspects and its opinion in the matter.

19.7. Till report of the Committee is received, no arrest should normally be effected.

19.8. The report may be then considered by the investigating officer or the Magistrate on its own merit.

19.9. Members of the Committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.

19.10. The members of the Committee may be given such honorarium as may be considered viable.

19.11. It will be open to the District and Sessions Judge to utilise the cost fund wherever considered necessary and proper.

19.12. Complaints under Section 498-A and other connected offences may be investigated only by a designated investigating officer of the area. Such designations may be made within one

month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today.

19.13. In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior judicial officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord.

19.14. If a bail application is filed with at least one clear day's notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife/minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest/custody and interest of justice must be carefully weighed.

19.15. In respect of persons ordinarily residing out of India impounding of passports or issuance of red corner notice should not be a routine.

19.16. It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the court to whom all such cases are entrusted.

19.17. Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to

grant exemption from personal appearance or permit appearance by videoconferencing without adversely affecting progress of the trial.

19.18. These directions will not apply to the offences involving tangible physical injuries or death.

20. After seeing the working of the above arrangement for six months but latest by 31-3-2018, the National Legal Services Authority may give a report about need for any change in above directions or for any further directions. The matter may be listed for consideration by the Court in April, 2018.

21. Copies of this order be sent to the National Legal Services Authority, Director General of Police of all the States and the Registrars of all the High Courts for further appropriate action.

22. It will be open to the parties in the present case to approach the trial or other court concerned for further orders in the light of the above directions.”

Learned Advocate appearing on behalf of the petitioners has also relied on a case of **B.S.Joshi & Ors. Vs. State of Haryana & Anr.** reported in **(2003)4 Supreme Court Cases 675** wherein Hon’ble Apex Court handed down the following principle:-

“.....14. There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hypertechnical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of

inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code.

15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.”

Considering the background of the case as well as principle enunciated in the above cases, I am not inclined to stand in the way of compromise between the parties, which would be an abuse of process of Court. This being the position, the proceeding in connection with G.R. Case No.275 of 2018, arising out of Arambagh Police Station Case No.138 of 2018 dated 03.03.2018 under Sections 498A/406/307 of the Indian Penal Code stands quashed. As a sequel, CRAN 2 of 2023 stands allowed.

CRAN 1 of 2023 being infructuous and stands disposed of.

With the above observations, CRR 2860 of 2018 is also disposed of.

Parties are at liberty to act on the server copy of this order duly downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)