

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3688 of 2011

Mahadeb Halder and Anr.

-Vs-

The State of West Bengal

For the Petitioners : Mr. Gouranga Kumar Das
Ms. Poulami Dutta

For the State : Mr. Narayan Prasad Agarwala
Mr. Pratick Bose

Heard on : 17.11.2023, 29.11.2023, 01.12.2023

Judgment on : 07.03.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is filed by the petitioners against an order dated 05.12.2010 for stay of the warrant of arrest being process no. 781/2010 and 782/2010 in C.R. Case No. 62 of 2010 passed by the Learned Additional Chief Judicial Magistrate, Kakdwip, District – South 24 Parganas tagging Sections 498A/304B/120B/406 and 34 of the Indian Penal Code.
2. Petitioners stated that the brother of the victim lady lodged a written complaint in the form of filing an application under Section 156 (3) of the Code of Criminal Procedure before the Learned Additional Chief Judicial Magistrate, at Kakdwip and the same was received on 21.01.2010 being

Dholahat P.S. Case No. 17/2010 and the case was filed on 17.11.2009 and lodged written complaint on 21.01.2010 so there was a considerable gap between filing of the application under Section 156 (3) of the Code of Criminal Procedure and lodging of written complaint on 21.01.2010 and the incident occurred on 01.11.2009 so the discrepancies of dates are explicit.

3. Petitioners stated that petitioners had been the in-laws being the mother-in-law aged 70 years and the petitioner no. 1 was the brother of the principal accused who had been falsely implicated in the said occurrence and the petitioner no. 1 was out station on the day of occurrence.
4. On 05.12.2010 the Learned Additional Chief Judicial Magistrate had been pleased to issue warrant of arrest against the petitioners and in total non-application of mind and as such the order dated 05.12.2010 was liable to be stayed and set aside.
5. Learned Advocate for the petitioners submitted that –
 - i. The Learned Additional Chief Judicial Magistrate at Kakdwip ought to have considered the statements of the victim's mother that the victim lady committed suicide by taking poison.
 - ii. The Learned Additional Chief Judicial Magistrate at Kakdwip ought to have consider on the principal accused have been granted bail by the Learned Sessions and District Judge in regular bail under Section 439 of the Code of Criminal Procedure and the accused no. 4 having illicit relation with the victim lady got anticipatory bail from the Hon'ble Court.

- iii. The impugned order dated 05.12.2010 by issuing of arrest against the petitioners was liable to be stayed and set aside.
6. The Learned Advocate for the State submitted that the petitioners had been absconding and the impugned order by the Trial Court was justified.
7. The Dholahat Police Station received a complaint on 21.01.2010 filed by one Goutam Halder alleging that his sister Shaibya Halder was married to Jaydeb Halder on 13.03.008 with a provision of Rs.20,000/- cash and gold ornaments and other articles. After the said marriage the husband of the victim Jaydeb Halder along with Mahadeb Halder, Rani Halder, Umri Halder tortured his sister for a further demand of Rs.50,000/- in cash. On 01.11.2009 the accused persons assaulted the victim and murdered her. Contrarily declaring the victim committed suicide by consuming poison.
8. Based on the aforesaid Dholahat Police Station Case No. 12/10 dated 21.01.2010 under Sections 498A/304B/120B/406 of the Indian Penal Code was registered. The aforesaid accused persons were arrested and subsequently released on bail by the order of the Court.
9. The Investigating Officer collected the post-mortem report and had sent the viscera of the deceased victim to the Director-cum- Senior Chemical Examiner, Forensic Science Laboratory, Medical College, Calcutta-12.
10. In compliance of the provisions under Section 161 Cr.P.C. the Investigating Officer recorded the statement of Kalikundu Halder, Bhagabati Halder, Barada Halder, Jamuna Halder, Gita Halder, Pratima Bairagi. The aforesaid witnesses were primarily the residents of Dholahat where the matrimonial

residence of the deceased victim. The aforesaid witnesses in unison alluded of torture being inflicted upon the victim both physically and mentally which reached its zenith on 01.11.2009 when the victim was assaulted by the aforesaid perpetrators who subsequently murdered her.

11. It was further alleged that the victim was suffering from mental trauma and might have consumed poison. It was further alleged the husband of the victim had an illicit relationship with his sister-in-law. Moreover, the murder of the victim was disguised to be a case of suicide.
12. On completion of the investigation charge-sheet was submitted by the Investigating Officer vide Dholahat P.S. C/S No. 281/10 dated 01.12.2010 under Sections 498A/304B/406/120B/34 of the Indian Penal Code against the present petitioners and two others.
13. The Learned Advocate for the State has produced the Case Diary. The perusal of the materials of the Case Diary categorically establishes the fact that in the instant case was different from the allegations against the family members of the husband which are general and omnibus in nature. It is an exception to the proclivity of involving all the in-laws or family members of the husband implicating them under the aforesaid Sections.
14. In the case of ***State of Haryana and Others v. Bhajan Lal and Others***¹ the Hon'ble Supreme Court observed as follows :-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the

¹ 1992 SCC(Cri) 426

exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding 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.”

15. Whether the victim died of cholera or had consumed poison or had been murdered by the accused persons named in the charge-sheet requires proper evaluation through recording of evidence.
16. In the instant case, the complaint as well as the FIR depicts cognizable offence along with specific role attributed the petitioners as transpired from the perusal of materials on record. The charge-sheet in the instant case has already been submitted and the present petitioners cannot be allowed to go scot free and must face the trial to unravel the veracity of the complaint.
17. The petitioners have the opportunity and liberty to agitate their grievances before the Trial Court.
18. In view of the above, the instant criminal revisional application is dismissed.
19. There is no order as to costs.

20. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
21. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)