

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

CRR 3866 OF 2023

PABITRA ADAK & ORS.
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Sabir Ahmed,
Mr. Bhaskar Hutait,
Mr. Dhiman Banerjee,
Mr. Ezaz Ahmed.

For the State : Mr. Bitasok Banerjee,
Mr. Arabinda Manna.

Hearing concluded on : 27.11.2024

Judgment on : 11.12.2024

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of the proceeding being GR case no.1371 of 2023 and all orders passed therein arising out of Sabang PS case no.125 of 2023 dated 13.04.2023 under Sections 498A/323/307/34 of

IPC pending before the learned Chief Judicial Magistrate, Paschim Medinipur on the ground that this is the second FIR on the self-same allegation.

2. It is submitted by the learned counsel for the petitioner that the petitioner is already facing trial in a prior case on the self allegation filed by the private opposite party no. 2 here being Sabang PS case no.121 of 2020 dated 04.06.2020 under Sections 498A/323/506/34 of IPC. **The trial in the said proceedings has commenced.**
3. **The allegations in both the cases arise out of the matrimonial dispute between the parties.**
4. 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.***

5. It is further seen that since the year 2020, when she filed the first case, the complainant has left her matrimonial home and **has now after almost three years initiated the present case on 13.04.2023.**
6. **CRR 3866 of 2023 is thus allowed.**
7. Accordingly in the interest of justice and to prevent abuse of process of law, the proceeding being GR case no.1371 of 2023 and all orders passed therein arising out of **Sabang PS case no.125 of 2023** dated 13.04.2023 under Sections 498A/323/307/34 of IPC pending before the learned Chief Judicial Magistrate, Paschim Medinipur **is hereby quashed.**
8. The Learned Magistrate to proceed with the trial in **Sabang P.S. case no. 121/2020** in accordance with law.
9. All connected Applications, if any, stand disposed of.
10. Interim order, if any, stands vacated.
11. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

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

(Shampa Dutt (Paul), J.)