

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**CRR 4158 of 2022
With
IA No. CRAN 4 of 2023**

**Avishek Biswas & Ors.
Vs.
The State of West Bengal & Anr.**

For the petitioners : Mr. Kumar Jyoti Tewari
Mr. Amrit Sinha
Mr. Aniruddha Tewari

For the opposite party no.1/State : Mr. Bidyut Kumar Roy
Ms. Sima Biswas

For the Opposite party no.2 : Mr. Kollol Mondal
Mr. Krishan Ray
Mr. Souvik Das

Heard on : 24.07.2024

Judgment on : 06.08.2024

Ajoy Kumar Mukherjee, J.

1. In the present application the petitioner sought for quashing the criminal proceeding being G.R case no 709 of 2022 arising out of Jhargram Police Station case no. 215 of 2022 dated 16.07.2022 under sections 498A/307/406/420/34 of Indian Penal Code and Section 3 and 4 of Dowry Prohibition Act, 1961 presently pending before the court of learned Chief Judicial Magistrate at Jhargram.

2. Petitioners' contention is that petitioner no.1 was married with the defacto complainant/opposite party no. 2 on 22nd April 2015 and thereafter started to live in Hyderabad. Due to some dispute and differences, they left Hyderabad on 3rdFebruary 2022. However petitioner no.1 herein filed a suit for restitution of conjugal rights. It is not in dispute that the petitioner no.1 and defacto complainant are living separately from 3rd February 2022.

3. Opposite party no. 2 herein thereafter filed one application before Chief Judicial Magistrate at Jhargram on 13th January 2021 under section 156(3) of the code of criminal procedure, 1973 Cr.P.C with a prayer to send the same to the local police station for investigation after treating the same as First Information Report (in short FIR) Learned Magistrate by his order dated 13thJanuary 2022 instead of allowing de facto complainant's prayer made under section 156(3) of the Code, treated the same as a complaint under section 200 of the Code and notice was issued to the petitioner herein and after receipt of notice, petitioners obtained bail from learned Magistrate on 14thJuly 2022.

4. Two days thereafter i.e. on 16th July 2022 the complainant/Opposite Party no.2 herein lodged an FIR against the present petitioner. In the said FIR there is no whisper about the pendency of the aforesaid complaint case initiated by the FIR maker but concerned police, treating the de facto complainant's statement as true started aforesaid Jhargram police station case no 215 of 2022 dated 16thJuly 2022.

5. The main grievance ventilated by the petitioner in the present application is that on the self-same allegation, there cannot be two criminal cases and the present criminal proceeding had been initiated without

disclosing the fact that on the self-same allegation the complain case is pending, where evidence is going on before the learned Magistrate. Accordingly petitioner contended that the process of criminal law has been abused at the hands of de facto complainant and any investigation in connection with the aforesaid Jhargram police station case no 215 of 2022, if allowed to be continued, would be an abuse of process of law. Infact in the guise of investigation, Investigating Officer (IO) at the instance of the opposite party no 2 and her relatives are harassing the petitioner. He further submitted, since the allegation made in the FIR are the subject matter of the aforesaid complain case, so the police case initiated by de facto complainant on the self-same allegation are liable to be quashed. Moreover the allegation made in the FIR do not prima facie constitute any offence or make out any case against the petitioners as all the allegations are omnibus in nature and entire family of the petitioner no. 1 have been implicated just to wreak vengeance.

6. Mr. Mondal learned counsel appearing on behalf de facto complainant /opposite party no. 2 argued that though the petitioner has prayed for quashing the criminal proceeding on the ground that the subject matter of both the proceeding are same but the FIR clearly reveals that the opposite party no. 2 has categorically mentioned certain subsequent facts which exclusively constitute offences, irrespective of fact canvassed in her earlier complain case, pending before the learned jurisdictional court, being case no. C.R case 1 of 2021. In the FIR, the opposite party no.2 herein as FIR maker categorically stated with regard to the fact of entrustment of the car documents along with its keys to the petitioner and as to how subsequently

the accused persons have refused to hand over the properties entrusted with them by the petitioner which constitutes an offence of criminal breach of trust in its individuality.

7. Mr. Mondal further submits that there is one more specific allegation in the instant police case that the signature of the opposite party no. 2 has been forged by the petitioner, in order to procure her bank statement and the motive behind the said forgery of signature of the opposite party no.2 by the petitioner is substantially clear as it was an attempt to substantiate their claim before the learned jurisdictional court dealing with the proceeding of awarding maintenance to the opposite party no.2 herein/wife. This constitutes the ingredient of offence under Section 463 of the Code which states that whoever makes any false document with intent to support any claim is said to have committed forgery. Infact said forgery was made to substantiate the claim before the concerned jurisdictional court dealing with the proceeding of maintenance. Though police may have abstained from putting any section concerning the offence of forgery in the in the formal FIR but that does not preclude the FIR maker to get justice in respect of the complain lodged by her, since it is the fact which constitute the offence. The investigation of the police case has not yet been concluded and therefore it is quite obvious that unless the investigation concluded and the charge sheet is submitted against the accused persons and the opposite party no. 2 is informed, in the event any final report is submitted, she will not be able to ventilate her contention before the jurisdictional court in the form of a petition under section 173 (8) of the Code. Accordingly in the event the instant proceeding is quashed by this court it would preclude the opposite

party no. 2 from availing her legal rights as has been canvased in the code, and the same will cause serious prejudice to the interest of the opposite party no. 1 since the petition of complain and the FIR ventilates two separate distinct offences. It cannot be said to be an identical petition of complain replicating the earlier complaint case and accordingly the present application is liable to be dismissed.

8. Mr. Bidyut Kumar Roy learned counsel appearing on behalf of the state/opposite party No.1 herein, submits that this court by its order, noted that there is allegation of forging the signature of the complainant by the husband for acquiring the bank statement and that specimen signature of both the parties have been collected by the investigating officer for comparison by handwriting expert, and accordingly directed the state to produce the report of the handwriting expert. Mr. Mondal today submitted a report sent by IO which reveals that so far material collected from the handwriting expert it reveals that some documents were made by the accused by making signature of Tiyashi Mitro by someone else. Accordingly Mr. Roy submits that during investigation a prima facie criminal offence has been made out against other accused persons and that investigation is still continuing and as such the question of quashing the criminal proceeding which prima facie discloses about committing offence by the accused, does not arise at all. Accordingly State also vehemently opposed the petitioners' prayer for quashing the aforesaid proceeding.

9. I have considered submissions made by both the parties.

10. Form the content of written compliant and the FIR, it is not in dispute that in the FIR, the FIR maker/ opposite party no.2 herein has made

additional allegations of attempt to murder and forgery with specific allegation that her signature was forged to get access in her bank account.

11. A bear reading of Section 210 of Cr.P.C makes it clear that during an enquiry or trial relating to a complain case, if it is brought to the notice of the magistrate that an investigation by the police is in progress in respect of the same offence, he shall stay the proceeding of the complainant case and call for the record from the police officer conducting the investigation. It also lays down the procedure to be followed when there is a complain case and police investigation in respect of the same offence. However, though it appears from Section 210 that the magistrate may try the two cases arising out of a police report and a private complain together and it contemplate situation where having taken cognizance of an offence in respect of an accused in a complainant case in a separate police investigation such a person is again made an accused then the magistrate may enquire into or try together the complain case and the case arising out of police report as if both the cases were instituted in a police report. However if the accused person of both the cases are different in two separate proceedings the situation infact arisen where prejudice in all possibility is likely to be caused in a single trial where a person is both an accused and a witness in view of two separate preceding, out of which the trial arises the thing may be otherwise.

12. In *Herjind Singh Vs. The state of Punjab* reported in **(1985) 1 SCC 422** it was held that the clubbing and consolidating the two cases one on a police challan and the other on a complain and if the prosecution version in the two cases are materially different contradictory and mutually exclusive

should not be consolidated and should be tried together with the evidence in the two cases being recorded separately so that both the cases could be disposed of simultaneously.

13. In *Kapil Agarwal and others vs. Sanjoy sharma and other*, reported in **(2021) 5 SCC 524** the Apex court observed that if a report is made by the IO 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 enquire into or try together the complain case and the case arising out of the police report as if both the cases were instituted on a police report. However if the police report does not relate to any accused in the complain case or if the magistrate does not take cognizance of any offence on a police report, he shall proceed with the enquiry or trial which was stayed by him in accordance with the provision of Cr.P.C. Accordingly supreme court held that merely because on the same set of facts with the same allegation and averments, earlier the complaint is filed there is no bar to lodge the FIR with the police station with the same allegation and averments. In the said judgment it was also observed that if at the same time it is found that the subsequent FIR is an abuse of process of law and the same has been lodged only to harass the accused the same can be quashed in exercise of power under section 482 of the Cr.P.C or under Article 226 of the constitution and in that case obviously the complaint case only will proceed further in accordance with the provision of the Cr.P.C.

14. Coming back to the present context as I have noted above that the investigation about the police case has not yet been completed and the

report of hand writing expert collected by IO during investigation and other materials in the record prima facie discloses criminal offence, and as such it can not be said that the subsequent FIR, if allowed to proceed further would be an abuse process of law nor it can be said that the FIR maker has incorporated the said allegation in the FIR only to harass the accused.

15. In such view of the matter **C.R.R 4158 of 2022** is dismissed having no substance. Connected Application is also disposed of accordingly.

16. However, this dismissal order will not preclude the petitioner herein to make prayer under section 210 of Cr.P.C before the court below in the appropriate stage if situation demand and if any such prayer under section 210 or any other appropriate application of similar nature is preferred before the court below, such prayer will be disposed of in accordance with law without being influenced by any observation made herein.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJOY KUMAR MUKHERJEE, J.)