

Item No.8
Ct.No.34
dc.

C.R.R. 4458 of 2023
with
CRAN 1 of 2023

In Re: An Application under Section 482 read with Section 397 of the Code of Criminal Procedure, 1973.

Affidavit-of-service filed in Court today be kept with the record.

The present revisional application has been preferred challenging the continuance of CR-574/2022 which is pending before learned Additional Chief Judicial Magistrate, Haldia, Purba Medinipur. Additionally the impugned order dated 17.12.2022 has also been challenged.

The learned advocate appearing for the petitioner has challenged this proceeding on the grounds that there is a difference in the version in the complaint and the examination of the complainant under Section 200 of the Code of Criminal Procedure which was recorded by the learned Additional Chief Judicial Magistrate, Haldia, Purba Medinipur.

I find from the records of the case that process was issued under Section 498A of the Indian Penal Code. According to the learned advocate for the petitioner, the main thrust of contention is that there was no allegation of demand

of dowry in the examination under Section 200 of the Code of Criminal Procedure while in the complaint there was an allegation regarding the demand of dowry which was given at the time of marriage. It has also been contended that there is a difference between the nature and manner of assault complained of in the petition of complaint as also in the examination under Section 200 of the Code of Criminal Procedure. The learned advocate has also sought to differentiate between paragraph 21 of the complaint and the concluding part of the examination under Section 200 of the Code of Criminal Procedure wherein the element of the petitioner being abused and assaulted publicly is absent. Paragraph 21 of the complaint is set out as follows :

“21. That it is to be also mentioned here that in the recent past dated 21/08/2022 the Complainant had visited the Chandanagar residence to collect some of her official documents, but instead of providing the documents, she was molested and humiliated by both the above named accused persons, by way of tearing off her t-shirt in front of other family members.”

The other contention is relating to Section 202 of the Code of Criminal Procedure wherein the learned advocate has stressed on the issue that the case has been instituted at Haldia while the husband is staying within the jurisdiction of Chandannagar, district Hooghly and the learned Magistrate has not conducted any enquiry to that effect prior to issuance of process. To that effect, the learned advocate for the petitioner has relied upon decisions of Hon’ble Supreme Court in ***National Bank of Oman Vs. Barakara Abdul Aziz and***

Another reported in **(2013) 2 Supreme Court Cases 488** and **Deepak Gaba and Others Vs. State of Uttar Pradesh and Another** reported in **(2023) 3 Supreme Court Cases 423** and stressed on the issue that in the case of National Bank of Oman (supra), the Hon'ble Supreme Court in paragraph 9 has categorically stated as follows :-

“9. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

- (i) on the materials placed by the complainant before the court;*
- (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and*
- (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.”*

In respect of Deepak Gaba & Ors. (supra), the Hon'ble Supreme Court was pleased to hold that in respect of offences relating to cheating, criminal breach of trust, forgery prior to issuance of process, it was incumbent upon the learned Magistrate to conduct an enquiry or direct an investigation to be made by a police officer or such other officer for finding out whether or not there is sufficient ground for proceeding against the accused. The said exercise was not done and as

such, the Hon'ble Supreme Court was pleased to quash the impugned orders.

Having considered the procedure so adopted by the learned Magistrate in the present case, I find that the case arose out of matrimonial dispute and discord. The main thrust of contention in the petition of complaint was that the husband used to physically and mentally torture his wife suspecting her character who happened to be a Branch Manager of a nationalised bank situated at Haldia, Purba Medinipur. The complainant in her examination under Section 200 of the Code of Criminal Procedure stated that her husband used to visit Haldia and also assaulted her and in the month of July, 2022 when her husband came to his residence at Haldia, he inflicted physical torture and her mother-in-law used to instigate her husband so far as dispute and tortures were concerned. It has also been alleged that when the complainant visited Chandannagar to collect her official documents, on that date her husband abused and assaulted her and tore her wearing apparels.

Be that as it may, the very object of Section 202 of the Code of Criminal Procedure as has been provided in the objects of the amendments was to see that false complaints are not filed against persons residing at far off places simply to harass them and innocent persons are not harassed by unscrupulous persons and as such it was made obligatory on the part of the Magistrate before summoning the accused who are residing beyond the jurisdiction. The term 'unscrupulous persons' used under Section 202 of the Code of Criminal

Procedure cannot be used in a matrimonial relationship as husband and wife are known to each other and there is no denial of the fact to the effect that there was no matrimonial relationship between the persons. What is disputed by the present petitioner is regarding the truth or veracity of certain events and their occurrence. The very purpose which has been set out by the Hon'ble Supreme Court in Deepak Gaba's case (supra) was for ascertainment prior to issuance of process, the learned Magistrate is to see that the complainant discloses the offence and the materials support and constitute essential ingredients of the offence. If there are any ambiguities which are debatable and doubtful on paucity and lack of clarity of facts or on law, the learned Magistrate, prior to issuance of summons should and is obliged to conduct an enquiry under Section 202 of the Code of Criminal Procedure.

Both the cases relied upon by the learned advocate for the petitioner arise out of commercial transactions wherein the probability of deceit, continuous business transaction, its intention and whether a civil dispute has been given a cloak of a criminal proceeding and by way of invoking the provisions of criminal law, there was a probability of false implication of persons who were residing at far off places had an immense impact. In the present case what I find from the records that summons were issued. In fact, the present petitioner has already entered appearance. There is no ambiguity regarding the relationship, the allegations of false implication because the accused is residing at a far off place has no relevance in the instant case. Learned Magistrate has

exercised all the available due diligence under the law prior to issuance of process which would cover the term “enquiry”, except used the term “under Section 202 of Cr.P.C”. There may be differences in narration of facts which are to be tested by way of cross-examination, but to hold that an enquiry is required by a police officer in a case under Section 498A of the Indian Penal Code where the lady herself as in usual proceedings did not approach the police under Section 154 of the Code of Criminal Procedure or invoked the jurisdiction of the Magistrate under Section 156(3) of the Code of Criminal Procedure would be at the very inception commenting upon the merits of the allegations which have been made at the instance of the complainant.

Having considered the totality of the circumstances, and the discretion exercised by the learned Additional Chief Judicial Magistrate, Haldia, Purba Medinipur while taking cognisance of the offence conducting examination under Section 200 of the Code of Criminal Procedure and thereby coming to a conclusion for issuing process under Section 498A of the Indian Penal Code, I am of the view that there is no requirement of postponement of issuance of process or using the term “under Section 202 of the Code of Criminal Procedure”. Enquiry would have been a mere technical formality in a matrimonial dispute of such nature having regard to the allegations in the complaint as well as the examination under Section 200 of the Code of Criminal Procedure. Consequently, I am not inclined to interfere either

with the continuation of the proceedings or the order dated 17.12.2022.

With the aforesaid observations, the revisional application being CRR 4458 of 2023 along with CRAN 1 of 2023 is dismissed.

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

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

(Tirthankar Ghosh, J.)