

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1722 of 2020

Apu Kundu

Vs

State of West Bengal & Anr.

For the Petitioner : Mr. Shibaji Kumar Das,
Mr. Dipendu Sarkar.

For the State : Mr. Rana Mukherjee,
Ms. Sujata Das.

For the Opposite Party No. 2 : Mr. Avik Ghatak,
Mr. Fahad Imam.

Hearing concluded on : 28.02.2024

Judgment on : 04.04.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against Order dated 3rd December, 2020 passed by the Court of the Learned Additional Chief Judicial Magistrate-in-Charge, Barrackpore, District – North 24 Parganas in connection with Jagaddal Police Station Case No. 47 of 2018 dated 14th January, 2018 under Sections 498A/494/420/406/120B/34 with added Sections 313/307 of the Indian Penal Code. 1860 corresponding to G.R. No. 250 of 2018.
2. The petitioner states that he is a businessman by occupation and the Proprietor of M/s. A.K. Traders. The petitioner herein was also a Partner of “M/s. Aranyak” which has presently closed down.
3. He was married to Kakali Ghosh (Kundu), Opposite Party No.2 herein on 19th November, 1997 who presently is working for gain as Inspector-In-Charge, Baruipur Woman Police Station. At the time of marriage, the Opposite party No.2 was unemployed and thereafter in the year 1998 she got her service and was first posted as a Sub-Inspector of Police, West Bengal Police in Kotwalli Police Station, District – Nadia.
4. The petitioner states that the Opposite Party No.2 herein by mis-utilizing her power, position post and influence on the police authorities on 14th January, 2018 lodged a Written Complaint with the Officer-In-Charge, Jagaddal Police Station, District–North 24 Parganas

and initially gave its genesis to Jagaddal Police Station Case No. 47 of 2018 dated 14th January, 2018 under Sections 498A/494/420/406/120B/34 of the Indian Penal Code, 1860 corresponding to G.R. No. 250 of 2018 as against the Petitioner herein and others which is pending in the Court of the Learned Additional Chief Judicial Magistrate, Barrackpore, District - North 24 Parganas, wherein the order under revision was passed.

5. The order under revision is as follows:-

“Jagaddal P.S. Case No. 47/18 dated 14/01/2018

Order dated 3/12/2020

Today is fixed for I.O's report regarding the opening of bank locker no. 158 of SBI Kankinara Branch. The I.O. submitted his report stating that the accused Apu Kundu did not comply the Court's order and did not turn up on 02.12.20 at the time fixed by him in his notice.

Ld. A.P.P. vehemently prays for adverse order against the accused person.

Ld. Advocate representing the de facto complainant also supported the contention of the Ld. A.P.P.

Ld. Advocate for the accused person prays for recall of order dated 27.11.20 on the ground that the de facto complainant /Kakali Ghosh is singly handling/operating the aforesaid bank locker as informed by the SBI vide their information dated 11.10.19 Ld. Advocate also submitted due to non-production of C.D. before the Hon'ble Appellate Court, no substantial order can be passed and therefore, this Court has no jurisdiction or discretion to consider this matter nor pass any operative order.

Firstly, there is no provision in the Cr.P.C. regarding the recall of its own order. As it appears from the case record that order dated 27.11.20 is passed only to enforce the compliance of order dated 15.10.19. The order dated 15.10.19 stands good till date being unchallenged.

Ld. Advocate for the accused also failed to apprise this Court of any stay order against the same.

In the information order dated 11.10.19 the bank authority specifically pointed out that the single operation could not be allowed either to the accused or the complainant. In such case, it is crystal clear before this Court that to a proceed with the investigation, the I.O. requires presence of both the complainant and the accused in the concerned bank. In such case, the I.O's prayer is justified.

Ld. Advocate for the accused raised vehement objection stating that the prosecution did not supply with any copy of the I.O's prayer. Again there is no provision of CRRO and Cr.P.C. that the I.O./prosecution will furnish any copy upon the accused person. However, the accused is at liberty to scrutiny the case record in presence of GRO, Barrackpore Court. Since they are already performing hearing at length, it is presumed that they are well versed with the prayer of the prosecution. In such case, the prayer for recall raised by the Ld. Advocate for the accused person is rejected.

The accused person is directed to comply the order dated 15.10.19 and the repeated order dated 27.11.20 within four days positively i.d. necessary order.

To 7/12/20 for compliance report by the I.O. and the accused person is directed to comply with this Court's order and in furtherance with the I.O.'s notice regarding the joint operation of the bank locker, i.d. necessary order.

Inform accordingly.

D/C by me.

Sd/-
ACJM, Barrackpore-In-Charge.”

- 6. The order dated 27.11.2020 referred to in the order under revision is as follows:-**

“Jagaddal P.S. Case No. 47/18 dated 14/1/18.

Order dated 27/11/20

Today is fixed for passing order regarding petition dated 21.10.20 filed by the I.O.

The record is taken up for passing order. Perused the prayer of the I.O. (1) and other relevant materials on record.

It appears from the case record that it is a case of 14.1.18. One Kakali Ghosh got married to one Apu Kundu and one male child namely Aranyak was born in their wedlock. After marriage, the complainant was subjected to physical and mental torture. She was the bank loan guarantor, with the capacity of her government service and other landed properties. But subsequently, her husband got involvement in an extra marital affair with one Nandita Biswas and opened another partnership firm namely M/s Aranyak and made the above mentioned Nandita Biswas, a partner of 51% therein. On 21.06.17 Kakali Ghosh was mercilessly assaulted by her husband and thereafter, she lodged a GDE at Jagaddal P.S. in that regard. It further appears that accused Apu Kundu and other concerned parties were called by the I.O. on 19.10.20 to comply this Court's order dated 15.10.19 regarding the opening of bank locker no. 158 of SBI, Kankinara Branch, but inspite of several communications over phone from investigating officer as well as the Manager of SBI Bank, Kankinara Branch, the accused Apu Kundu found to be very much reluctant to comply this Court's order. On such ground, the I.O. of this case prayed for necessary order for single operation of victim Kakali Ghosh by the aforesaid bank locker for recovery of stridhan articles.

It also appears from the case record that on 15.10.19 the previous I.O. of this case prayed for an order of opening of bank locker no. 158 of SBI, Kankinara Branch in presence of the accused Apu Kundu and such prayer was allowed by this Court. More than a year has been elapsed the I.O's report reflects that the accused did not comply of this Court's order dated 15.10.19 which justifies the instant prayer of the present I.O. regarding single operation by the complainant/Kakali Ghosh.

However, there is a standing order of this Court in this regard prior to praying on order of this Court gives a final chance to the accused Apu Kundu to remain present at the SBI, Kankinara Branch along with the complainant and investigating officer on any date within 2nd December, 2020 after communicating with the I.O. failing which, this Court shall hold that the accused is willingly neglecting this Court's order and necessary (illegible) accordingly.

Meanwhile inform the I.O. and the accused or his Ld. Advocate.

To 3.12.20 for I.O's report regarding the opening of bank locker no. 158 of SBI, Kankinara Branch.

D/C. by me.

Sd/-

A.C.J.M, Barrackpore-In-Charge."

- 7. Thus it is clear that the petitioner was given sufficient opportunity and time by the Court to be present at the time of opening the Bank locker, but the petitioner did not comply with the directions of the Court in spite of there being no reason to disobey the Court's orders.**
- 8. Thus, though the petitioner has claimed that the said orders of the trial court are not in accordance with law, it is seen that the**

trial Court on the prayer of the Investigating Officer has passed an order which is clearly in accordance with law and thus calls for no interference by this Court, to prevent abuse of the process of Court/law.

- 9. CRR 1722 of 2020 is dismissed.**
- 10.** All connected applications, if any, stand disposed of.
- 11.** There will be no order as to costs.
- 12.** Interim order, if any, stands vacated.
- 13.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 14.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)