

April 25, 2024
AP (35)

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction**

CRR 68 of 2023

**In Re: Sri Debashis Saha and Anr.
Re: An application under Section 482 of the Code of
Criminal Procedure, 1973**

Adv. Supriya Singh,

...for the petitioners.

Adv. Nilay Chakraborty, Ld. APP

Adv. Sourav Ganguly,

... for the State.

Heard learned counsels for the parties.

The case diary is produced by the State.

This is an application under Section 482 of the Code of Criminal Procedure for quashing of the proceedings being G.R. Case no. 4140 of 2022 corresponding to Siliguri Women Police Station case no. 156 dated 14th September, 2022 pending before the Learned Additional Chief Judicial Magistrate at Siliguri, District- Darjeeling under Sections 376/328/509/506/323 of the Indian Penal Code.

Learned counsel for the petitioners submits that the second opposite party, in connivance with others, induced the petitioners to invest huge amount of money for purchasing various life insurance/health insurance and/or other allied products and intimacy developed between them in the meantime. The second opposite party duped the petitioners of a sum of Rs. 2,50,00,000/- (two crores fifty lakhs) and the first petitioner also had to take a loan for an amount of Rs. 1.75 crores through various means like House

Mortgage, Provident Fund Withdrawal, Gold Loan and Bank Loans. The first petitioner lodged a complaint against the second opposite party before the Siliguri Police Station on 12th March, 2022 which was registered at Siliguri Police Station Case no. 270 dated 12th March, 2022.

The second opposite party sought anticipatory bail before the District Court as well as the Hon'ble High Court which were turned down. After the prayers of the second opposite party were refused by the Courts, she chose to lodge the complaint against the petitioners on false allegations. Both the petitioners have been granted anticipatory bail by the District Court.

Learned counsel submits that the present complaint is a retaliation of the earlier complaint filed by the first petitioner against the second opposite party which led to refusal of anticipatory bail to the second opposite party by the High Court.

Learned counsel for the State produces the case diary and opposes the prayer of the petitioners.

It appears on perusal of the material on record that complaint against the second opposite party was lodged by the first petitioner on 12th March, 2022 under Sections 404/420/465/467/468/120B of the Code and her anticipatory bail was turned down by this Court on 10th August, 2022. The present complaint was lodged on 14th September, 2022 i.e., after refusal of anticipatory bail.

Several communications made by the second opposite party to the petitioners are found on record which prima facie demonstrate the consensual relationship between them. The case diary does not

disclose any incriminating material against the first petitioner, far less against the second petitioner who is the wife of the first petitioner.

True, jurisdiction under Section 482 of the Code ought to be exercised with extreme care, caution and circumspection and should not be used to stifle or axe down a legitimate prosecution. The test is whether the uncontroverted allegations as made out in the complaint prima facie establish the case and also whether continuation of such complaint shall amount to abuse of the process of law.

In the present case, the contention of the second opposite party prima facie speaks of a consensual relationship and mere insertion of Sections 376/328/509/506/323 of the Indian Penal Code does not by itself make out a prima facie offence under the said provisions and it is the substance of the complaint which is to be taken into consideration.

In view of the above, this Court is inclined to hold that the present complaint is a retaliation to the earlier complaint filed by the first petitioner and refusal of the anticipatory bail of the second opposite party. Continuation of such complaint shall amount to abuse of the process of law.

Hence the complaint along with proceedings of G.R. Case no. 4140 of 2022 is liable to be quashed.

The application being CRR 68 of 2023 is allowed.

Proceedings of G.R. Case no. 4140 of 2022 corresponding to Siliguri Women Police Station Case no. 156 dated 14th September,

2022 pending before the Learned Additional Chief Judicial Magistrate at Siliguri, District – Darjeeling is quashed.

The case diary be returned.

Urgent certified website copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Suvra Ghosh, J.)