

03.4.2024
Ct.No. 3
Item No.27
nb

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

CRR 94 of 2023

Aparna Roy Chodhury & Ors.
Vs.
The State of West Bengal & Anr.

Mr. Kollol Mondal,
Mr. Krishan Ray,
Mr. Hillol Saha Poddar,
.....for the Petitioner.
Mr. Sourav Ganguly,
..... for the State.

Affidavit of service filed the petitioner is taken on record.

The instant criminal revision has been preferred under Section 482 of the Code Criminal Procedure pertaining to G.R. Case No. 1558 of 2022 corresponding to Alipurduar Women Police Station Case No.54/2022 dated 2.7.2022 wherein charge sheet has been submitted under Section 498A of IPC against the present petitioners now pending before the learned Court of Additional Chief Judicial Magistrate at Alipurduar.

Learned advocate for the petitioners Mr. Mondal submits that the petitioner no.1 is the sister-in-law, petitioner no.2 is the brother-in-law and petitioner no.3 is the husband of opposite party no.2. He submits that marriage between the petitioner no.3 and the opposite party no.2 was solemnized in

the year 2005. The marriage has been duly consummated and out of the said wedlock between the parties two children were born. He submits that during last month of February/March 2022, the petitioner no.3 noticed that that behavior of opposite party no.2 has been changed. On query the opposite party no.2 has specifically stated in the month of May 2022 that she had having an extra-marital affairs with one person named Samar Saha residing at Newtown Bazar under the district Alipurduar and with whom the opposite party no.2 intends to settle and start a life and thus she was no longer interested in staying with the petitioner no.2. The O.P. no.2 also demanded the petitioner no.3 to give her divorce and to buy a separate flat for her to stay separately with Samar Saha. On the said issue, the dispute cropped up between the parties and the petitioner no.3 informed to the police by the petitionoern no.3 regarding the fact of dispute at Kasba police station vide G.D. entry dated 27.5.2022 as well as dated June 30, 2022.

Mr. Mondal, learned advocate further argued that the petitioner nos.1 and 2 being the sister-in-law and brother-in-law are not any way connected with the alleged offence, they are living separately in a separate place and had no connection regarding the marital dispute of petitioner no.3 and O.P. no.2. He further submits, the petitioners also filed the relevant identity proof, Aadhar Card regarding separate residence of petitioner Nos. 1 and 2.

Mr. Mondal further submits that being aggrieved by the conduct of the present petitioner No. 3 for not giving the desire divorce the opposite No. 2 has lodged a false complaint with the Alipurduar Police Station, on the basis of which the instant case was registered. He submits that the allegation of the written complaint are omnibus in nature and there is no specific evidence to substantiate any of the allegation as alleged by the de facto complainant in this case. He further stated that the investigation of the police is ended in charge-sheet accusing the present petitioner to be the offender of the alleged offence. He again submits that the investigation of the police is a table work and it was conducted in a perfunctory manner. He submits that the instant criminal proceeding is collusive and harasive, so it requires to be quashed.

Learned advocate for the State submits that the investigation of the police was initiated on the basis of a written complaint of the opposite party No. 2. During the course of investigation the I.O. has gone to the P.O. and collected the evidences. The statement of available witnesses recorded under Section 161 CrPC.

The relevant medical document as well as the connected papers has been collected by the I.O. during the course of investigation. The investigating office, after satisfying the prima facie involvement of the present petitioners in the alleged offence has submitted the charge sheet.

Mr. Ganguly further submits that the investigation of the police does not disclose any of the offence about one Arparna Biswas, so she has been discharged. Mr. Ganguly further submits that the investigation of the police would be very well reflected in the C.D. So, it cannot be said that the investigation is done in perfunctory manner.

Mr. Ganguly further submits that the materials and evidences collected by the I.O. during the course of investigation cannot be evaluated in a proceeding of quashing before this Hon'ble Court. So, he prayed for dismissal of the instant criminal revision.

Heard the learned advocates; perused the materials on record. It appears that the petition of complaint of Smt. Ankhi Biswas Karmakar, opposite Party No. 2 was filed on 2nd of September, 2022. The petition of complaint disclosed the physical and mental torture by all the accused persons since inception of marriage i.e. from the year 2005. The petition of complaint also disclosed that one daughter was born in the year 2006 and, thereafter, one son was born out of the wedlock between the parties in the year 2015. The specific date of torture was mentioned in the petition of complaint as 25.06.2022; wherein it has been alleged that present petitioner nos. 2 and 3 has entered into the flat and assaulted the petitioner as well as her daughter. Thereafter, they were locked in a room and the present petitioner Nos. 2 and 3 tried to burn

them. It has also been alleged in the petition of complaint that the de facto complainant and her daughter was treated at the hospital due to such assault. The medical document was annexed in the CD, which is the document of medical treatment of one Swesta Biswas i.e. the daughter of the de facto complainant. The I.O. has collected the statement of available witness. They are the mother, brother and relative of the de facto complainant who supported the case of the prosecution. The statement of neighbors of kasba flat was also recorded, who noticed the quarrel dispute between the husband and wife. However, considering, the entire facts and circumstance of the case and also considering the CD, it appears to me that the allegation against the present petitioner No. 1 is omnibus. There is no specific allegation in the FIR against the petitioner No. 1. Moreover, the I.O. has not collected any document or evidence against the direct involvement of the present petitioner No. 1 in the alleged offence. However, I find no justification to submit a charge-sheet against the petitioner No.1 in respect of the alleged offence.

Mr. Mondal argued specifically that there is no evidence against the petitioner No. 2 who is the brother-in-law of the de facto complainant. He also argued to look into the allegation in the petition of complaint against the petitioner no.2 which can not prove through the evidence of the neighbours which was recorded by the police at kasba.

I have perused the FIR wherein the direct allegation against the petitioner No. 2 is there in respect of alleged physical torture upon the de facto complainant and his daughter dated 25.06.2022. The said allegation of torture upon the married wife and her daughter is substantiated by the medical document collected by the investigating office. At this stage, discharge the petitioner No. 2 by omitting the evidentiary value of medical document collected by the I.O. is not justifiable and permissible under the inherent power of High Court under Section 482 of the Cr. P.C.

Considering the same, I think it necessary that the allegation against the petitioner No. 1 is groundless. So, the instant criminal proceeding against the petitioner Nos. 1 is hereby quashed.

However, the instant proceeding may be carried on against the petitioner Nos. 2 and 3. I find no justification to entertain the prayer of petitioner Nos. 2 and 3 in this criminal revision.

Under the above observation, the instant criminal revision is disposed of.

CD be returned immediately.

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

(Subhendu Samanta, J.)