

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
[CIRCUIT BENCH AT JALPAIGURI]

Present:

HON'BLE JUSTICE PARTHA SARATHI SEN

CRR No. 213 OF 2023

Akhilesh Dutta & others Petitioner

Versus

The State of West Bengal & others Opposite Parties

For the Petitioner: Mr. Kumar Shantanu, Learned Advocate

For the opposite party Nos. 2 & 3: Mr. Hillol Saha Podder, Learned Advocate

For the State: Mr. Aditit Shankar Chakraborty, Learned
Additional P.P.

Mr. Ujjwal Luksom, Learned Advocate

Last heard on: 30.01.2024

Judgment on: 01.02.2024

Partha Sarathi Sen, J:-

1. The instant case arises out of an application under Section 407 Cr.P.C. read with Section 482 Cr.P.C. whereby and whereunder the petitioners who are the accused persons before the Learned Trial Court have prayed for transfer of the case record of G.R. case no. 725 of 2018 as pending before the Court of Learned Chief Judicial Magistrate, Coochbehar to the Court of Learned Chief Judicial Magistrate Jalpaiguri.

2. For effective adjudication of the instant lis, the facts leading to filing of the instant application is required to be dealt with in a nutshell. Admittedly marriage between the Petitioner 3 and the opposite party no. 2 was solemnized on 22.02.2018. However, on account of family turmoil the Petitioner no. 3 and the opposite party no. 2 started residing separately for which the relationship between the petitioners who are the parents-in-law and husband of the opposite party no. 2 respectively and the opposite party nos. 2 and opposite party no. 3 being the brother of the opposite party no. 2 have become strained. In course of time the opposite party no. 2 lodged a written complaint dated 01.08.2018 against the petitioners with the O.C. Women Police Station, Coochbehar for which the said Police Station started Women Police Station case no. 127 of 2018 dated 01.08.2018 under Sections 498A/307 I.P.C. against the present petitioners. Investigation was taken up in the said case and on completion of the same charge-sheet under Sections 498A/307 I.P.C. against the present petitioners has been submitted in the Court of Learned Chief Judicial Magistrate, Coochbehar. It is pertinent to mention herein that in the said case all the 3 petitioners herein were on bail.

3. In the G.R. case no. 725 of 2018 arising out of the said Police Station case, the said Court has fixed several days for appearance for the present petitioners but on account of their absence warrant of arrest has been issued against the present petitioners.

4. In support of the instant application Learned advocate for the petitioners submits before this Court that before the Learned Trial Court the present petitioners could not appear basically on two scores namely :-

(a) The present petitioners are getting constant threats from the opposite party no. 3 being the brother of the opposite party No. 2 for which the present petitioners have lodged a written complaint with the appropriate authority.

(b) The present petitioner no. 2 who is the mother-in-law of the opposite party no. 2 is a Cancer patient and is thus facing difficulty in appearing before the said Court.

5. Per contra, Mr. Saha Podder Learned advocate for the opposite party no. 2 and 3 submits before this Court that the instant application has been filed with a mala-fide motive in order to frustrate the process of law. It is further submitted by him that in order to show their bonafide, the petitioners ought to have appeared before the Learned Trial Court to face the Trial in the aforesaid case.

6. While echoing the version Mr. Saha Podder, Mr. Ujjwal Luksom, Learned Counsel for the State submits before this Court that the present petitioner have taken a flimsy plea in order to avoid the warrant of arrest as issued against them.

7. This Court has meticulously gone through the petition under consideration as well as the supplementary affidavit as filed by the petitioners. This Court has given due consideration over the submissions of the Learned advocates for the contending parties. On perusal of the entire materials as placed before this Court it reveals that after obtaining the bail from the Learned Trial Court, the present petitioners remain absent in person on successive occasions and even they were not represented by their lawyer(s) by filing an application under Section 317 Cr.P.C. Had the present petitioners a bonafide attitude, they could appear before the Learned Trial Court through their Learned advocate and may seek protection from the Trial Court if they are at all apprehensive of their life and person at the hands of the opposite party no. 3 who is the brother of the opposite party no. 2/wife. Admittedly on 07.08.2023 a

written complaint was lodged against the opposite party no. 2 and 3 on account of alleged cause of threat at the instance of the opposite party no. 3 but this Court is of considered that by mere filing a written complaint, the present petitioners cannot seek exemption from appearance before the Learned Trial Court in the said case.

8. So far as the alleged illness of the petitioner no. 2 is concerned, some materials have been placed to substantiate that she is suffering from Metastatic Carcinoma which is one type of cancer but from the materials placed before this Court it does not transpire that on account of such disease, the petitioner no. 2 who is the mother-in-law of the opposite party no. 2 is prevented from attending the Court of Learned Chief Judicial Magistrate, Coochbehar on successive occasions.

9. Drawing attention to the photo copy of some paper cuttings, Learned advocate for the petitioners made an attempt to impress this Court with regard to the criminal antecedent of the opposite party no. 2 but this Court cannot take any judicial notice of such facts simply on the basis of such photo copies of the paper cutting.

10. In view of the discussion (Supra), this Court thus find no merit in the instant application. Accordingly CRR 213 of 2023 is dismissed on contest.

11. The present petitioners namely; Akhilesh Dutta, Ratna Dutta and Arnab Dutta are directed to appear before the Learned Chief Judicial Magistrate, Coochbehar in G.R. case no. 725 of 2018 positively within a fortnight from the day of passing of this judgment and on their appearance and application for bail with three days' prior notice to the Learned P.P./A.P.P. attached to the said Court, Learned Trial Court shall consider such bail application on merit on the same day and in the event such bail applications are allowed by the Learned Trial Court, the said Court is directed to take appropriate steps for ensuring safety and security of the present three petitioners whenever they will appear in G.R. case no. 725 of 2018 till conclusion of the said case.

12. With the aforementioned observation CRR 213 of 2023 is disposed of.
13. Liberty is given to the Learned Counsel for the State to take back the certified copy of the C.D. from the instant file.
14. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)