

CRR 1144 of 2023

With

CRAN 1 of 2023

Sandip Ganguly & Ors.

Vs.

The State of West Bengal & Anr.

Mr. Ayan Basu
Mr. Sumit Routh

...for the petitioners

Mr. Arinjay Pal
Mr. Ramit Mukherjee

...for the O.P. no. 2

Mr. Debasish Roy, Ld. PP
Mr. Arijit Ganguly
Mr. Koushik Kundu

...for the State

This application has been preferred seeking quashment of the impugned proceeding being Baduria Police Station case no. 75 of 2022 dated 10.2.2022 under Sections 498A/306/406/34 of the Indian Penal Code, presently pending before the court of learned Additional Chief Judicial Magistrate, 2nd Court, Basirhat, North 24 parganas, corresponding to G.R. case no. 541 of 2022.

The opposite party no. 2 herein lodged a written complaint against the present petitioners who are husband, mother-in-law and married sister-in-law of the alleged victim, under Sections 498A/306/406/34 of the Indian Penal Code and contended that the daughter of the complainant was married with the petitioner no. 1 and at the time of marriage, complainant gave cash and other valuable articles as dowry but after few days of her marriage, the daughter of the complainant was pressurized to bring more money and other articles as dowry from her parental house and on refusal, she was subjected to torture both

physically and mentally by her husband and other in laws. It has been further alleged in the first information report that on 17.6.2018, the petitioners had driven out the complainant's daughter from her matrimonial house and thereafter, she started to reside at her paternal house.

It is further alleged that on several occasions, complainant's son-in-law i.e. petitioner no. 1 herein came to the house of the complainant and threatened her daughter with filthy languages and thereafter, suddenly the victim was not feeling well and then she was admitted in R.G. Kar Hospital, where she expired on 27.1.2022. In the first information report, it was alleged by the FIR maker that his daughter committed suicide due to unbearable torture by the husband of his daughter and her in laws.

However, after completion of investigation, police has submitted charge-sheet under Sections 498A/34 of the IPC as the allegation of Section 306 or Section 406 of the IPC could not be substantiated during investigation.

Being aggrieved by the impugned proceeding, the petitioners herein submit that it is clear from the post mortem report that the *"Death was due to the effects of (feature suggestive of) hemorrhagic shock resulting from ruptured ectopic pregnancy"*. He further submits that petitioner no. 1 was married with the victim lady on 2.6.2010 and in the complaint, no specific allegation attributed against the petitioners. The first information report made by the complainant, is improper and suppression of facts and most are untrue. The first information report is suffering from serious infirmities. The petitioners are no way involved with the alleged occurrence.

He further submits that after going through the FIR, it appears that it is comprising of two parts, the first part of the FIR is omnibus in nature without any specific allegation against any of the petitioners and the second part of the FIR in connection with the alleged occurrence dated 26.1.2022 by implicating the petitioners under Sections 306 of the IPC, has not been substantiated during investigation. Accordingly he prays for quashing of the impugned proceeding.

In this context, he relied upon some judgments in the case of:

- i) **Geeta Mehrotra & Anr. Vs. State of U.P. & Anr. (Criminal Appeal no. 1674 of 2012).**
- ii) **Achin Gupta Vs. State of Haryana & Anr. (Criminal Appeal no. 2379 of 2024).**
- iii) **Mamidi Anil Kumar Reddy Vs. The State of Andhra Pradesh & Anr.**
- iv) **Preeti Gupta & Another Vs. State of Jharkhand & Another (Criminal Appeal no. 1512 of 2010).**
- v) **Kahkashan Kausar @ Sonam & Ors. Vs. State of Bihar & Ors. (Criminal Appeal no. 195 of 2022).**

Learned counsel for the private opposite party referred a judgment of **Rupali Devi Vs. State of Uttar Pradesh and Others** reported in **(2019) 5 SCC 384** and contended that the “cruelty” defined in the explanation to Section 498A of the IPC includes mental cruelty. From the contents of FIR, it is very much clear that the petitioner has inflicted mental cruelty upon her for which victim sustained an unnatural death. Moreover, he pointed out the charge-sheet and stated that issue of criminal breach of trust has been kept open by the investigating agency

and expressed intention to file supplementary charge-sheet after recovery of stridhan articles of the victim and as such, Section 406 of the IPC also attracts in the present context.

Learned counsel for the State placed the case diary and leaves the matter to the discretion of the court, in view of the materials available during investigation.

I have considered the submissions made by both the parties. Though the petitioners were initially booked under Section 306 and Section 406 of the IPC also but ultimately after investigation, police has submitted charge-sheet under Section 498A/34 of the IPC along with Section 4 of the Dowry Prohibition Act, as the allegation of abatement to commit suicide did not stand in view of the post mortem report, where the victim's death was not stated to be suicidal. Insofar as the allegation under Section 406 of the IPC is concerned, it reflects from the charge-sheet that the investigating agency has served notice under Section 91 of the Code of Criminal Procedure to the complainant. The police also served notice under Section 160 of the Code to the defacto-complainant for recording statement under Section 164 of the Code before a Magistrate for recovery of Stridhan Article from his daughter's matrimonial house but the defacto-complainant did not agree to recover the stridhan articles from the daughter's matrimonial house and he also refused to make statement before the Judicial Magistrate under Section 164 of the Code. In such view of the matter, the allegation under Section 406 also could not be substantiated during investigation.

Now so far as the allegation under Section 498A read with Section 4 of the Dowry Prohibition Act is concerned, it appears that no seizure was made and the allegation levelled in the FIR against the present petitioner are omnibus and general in nature. It has been stated that all the petitioners inflicted physically and mentally torture upon the alleged victim and for which she left her matrimonial house about 7 to 8 years back. During that 7 to 8 years, she never lodged any complain anywhere regarding alleged physical and mental torture on the ground of demanding dowry or for any other reason. The FIR has been lodged only after the death of the alleged victim, and whose death is neither suicidal nor homicidal but due to some diseases.

In such view of the matter, it appears that the allegations levelled against the present petitioners are baseless and does not have leg to stand. The veiled object behind the lame prosecution is apparently to harass the petitioners. In fact, the continuance of further proceedings will be a mere abuse of process of the court since it is very much apparent that there is no chance of conviction of the present petitioners at the end of trial, in view of the materials available so far in the case diary.

The court owes a duty, subject to allegation levelled in the complaint, to a thorough scrutiny to find out whether there is any truthfulness in the allegation or whether they are made only with the sole object to harass the petitioners.

Having considered facts and circumstances of the case, it appears that the impugned prosecution is wholly unfounded and therefore to secure the ends of justice and for preventing abuse of the process of the criminal court I find that this is a fit case

where the court is to exercise its inherent power under Section 482 of the Code of Criminal Procedure to quash the impugned proceeding.

CRR 1144 of 2023 is accordingly allowed. The impugned proceeding being Baduria Police Station case no. 75 of 2022 dated 10.2.2022 under Sections 498A/306/406/34 of the Indian Penal Code, presently pending before the court of learned Additional Chief Judicial Magistrate, 2nd Court, Basirhat, North 24 parganas corresponding to G.R. case no. 541 of 2022 is hereby quashed.

In view of disposal of CRR 1144 of 2023, the connected application being CRAN 1 of 2023 is also disposed of.

Urgent Photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)