

CRR 1652 of 2023

**Sushanta Biswas
Vs.
The State of West Bengal & Anr.**

Mr. Omar Faruk Gazi ...for the petitioner

Mr. Prasenjit Debnath
Ms. Pritha Biswas
Ms. Sayani Pan ...for the O. P. no. 2

Mr. Imran Ali
Ms. Puspita Saha ...for the State

This is an application wherein the petitioner has prayed for quashing of the criminal proceeding qua the petitioner herein, Sushanta Biswas, in G.R. case no. 1130 of 2022 arising out Balagarh Police Station case no. 162 of 2022 dated 16.5.2022.

It is submitted that the petitioner is the brother-in-law of the alleged victim. Petitioner and other accused persons were initially booked under Sections 498A/406/306/120B/34 of the Indian Penal Code. However, during investigation, it was revealed that the victim died due to Diarrhea and for which the present petitioner and the other accused persons have been charge-sheeted on 29th June, 2022 under Sections 498A/406/34 of the Indian Penal Code.

Being aggrieved by the impugned proceeding, learned counsel for the petitioner submits that the allegations made in the FIR does not disclose basic ingredients of offence under Sections 498A/406/34 of the Indian Penal Code and the petitioner has been falsely implicated in the present case with a

malafide intention to terminate him from his service who is presently serving as civic volunteer. The petitioner has got no nexus with the alleged incident and the daughter of the defacto-complainant died due to Diarrhea.

He further submits that on perusal of the statement made by the witnesses during investigation as well as from the contents of charge-sheet filed by the Investigating agency, it is palpably clear that the opposite party no. 2 with an ulterior motive initiated the criminal case although there has been no commission of any such offence which is triable either under Section 498A or Section 406/34 of the Indian Penal Code against the present petitioner. The allegation levelled in the complaint are bereft of truth and made maliciously.

In fact, the court below after receipt of the petition of complaint, mechanically directed an investigation in terms of Section 156(3) of the Code of Criminal Procedure and thereafter, the police had made a perfunctory investigation and submitted charge-sheet against the present petitioner. The investigating agency did not record the statement of the petitioner herein during the entire course of investigation. Accordingly, the petitioner has prayed for quashing of the impugned proceeding qua the petitioner herein.

Learned counsel for the opposite party raised objection contending that the contents of the FIR clearly discloses criminal offence against the present petitioner and from the charge-sheet, it transpires that the present accused along with other accused persons are absconding and for which, the investigating agency has submitted charge-sheet showing the petitioner as absconder.

He further submits that the investigation has already been culminated into a charge-sheet and as such, the proceeding should not be quashed and the truth will come out after conclusion of trial.

Learned counsel for the State submits that this is not a fit case for quashing the impugned proceeding. However, he leaves the prayer of the petitioner to the discretion of the court.

I have considered the submissions made on behalf of all the parties. On perusal of the statement recorded during investigation by the investigating agency, it appears that most of the witnesses have not levelled any allegation against the present petitioner and some of them has made some general and omnibus allegation against the petitioner. No specific role has been attributed against the present petitioner and it has only been stated by some of the witnesses that all the accused persons used to inflict mental torture upon the victim.

Supreme Court time and again has expressed it's serious anguish that it is a matter of serious concern that large number of cases continue to be filed under section 498A alleging harassment of married woman implicating relatives of the husband in matrimonial disputes with general and omnibus allegation of torture without analyzing the long term ramifications of a criminal trial. It is revealed that the allegation is that all the accused person inflicted mental torture upon the victim. No specific and distinct allegation has been made against the petitioner. It is not known to anybody what is the role played by the petitioner herein in furtherance of the omnibus allegation leveled against him. The allegation against petitioner

leveled, when, complainant's daughter died due to diarrhea, suspecting that her death is unnatural.

In order to lodge a proper complaint, mere mentioning that "all accused persons inflicted mental torture upon the victim" is not the be all and end all of the matter. What is required to be brought before the court by way of investigation, is the particulars of the offence committed by the present petitioner and the role played by him in committing of that offence.

Since other accused persons have not challenged the impugned proceeding, I am not require to examine the veracity of allegations (if any) against them but so far as present petitioner Sushanta Biswas is concerned, the allegations made against him, being general and omnibus, do not warrant prosecution.

Having considered the facts and circumstances of the case and the materials available in the case diary filed as annexure, I find that the continuance of further proceeding against the present petitioner will be a mere abuse of process of the court. The materials do not also suggest that there is any chance of conviction of the present petitioner on the basis of the materials so far collected during investigation.

In such view of the matter, CRR 1652 of 2023 is accordingly allowed. The impugned proceeding being G.R. case no. 1130 of 2022 arising out Balagarh Police Station case no. 162 of 2022 dated 16.5.2022 is hereby quashed qua the petitioner namely, Sushanta Biswas.

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.)