

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2516 of 2018

Arun Kumar Tikadar

Versus

The State of West Bengal & Anr.

For the Petitioner : Mr. Chittaranjan Ray, Adv.

For the Private
Respondent : Mr. Aritra Bhattacharya, Adv.
Mr. Saptarshi Basu, Adv.
Mr. D. Mukherjee, Adv.

For the State : Mr. Debasish Roy, Ld. P.P.
Mr. Saryati Dutta, Adv.
Ms. Sudeshna Das, Adv.

Heard on : 11.12.2024

Judgment on : 03.01.2025

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application has been filed by the petitioner under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the proceeding being Khardah P.S. Case No. 664 of 2017 dated 08.09.2018 vide G.R. No. 6017/17 under Sections 498(A)/406/382/511/506 of the Indian Penal Code, 1860 pending before the Learned A.C.J.M at Barrackpore.

2. It is the specific case of the petitioner that the Opposite Party No. 2 initiated false case against the Petitioner. A fake marriage was performed in between the petitioner and the opposite party no. 2 on 08.02.2012 and fulsajjya took place at the residence of the petitioner at Simultala, P.O. & P.S. – Bongaon, District – North 24 Parganas within Bongaon Police Station not within the jurisdiction of Khardah Police Station and/or in Barrackpore jurisdiction. Furthermore, marriage was not consummated.

3. The opposite party no. 2, Sudeshna Malakar residing separately from the petitioner at her parental house due to strained relations. The de-facto complainant/opposite party no. 2 gave birth to a male child on 25.10.2012 under the supervision of the parents of

the de-facto complainant/opposite party no. 2 at Charmack Hospital, Teghoria, Kolkata – 700 157.

4. Since marriage, de-facto complainant/opposite party no. 2 has been humiliating the prestige, honour and dignity of the petitioner and threatening the petitioner not to communicate with the de-facto complainant/opposite party no. 2 either physically and/or over telephone.

5. Lastly on 27.01.2017, the de-facto complainant/opposite party no. 2 sent last signal through her letter stating in details therein that there is no chance of the conjugal life in near future and clearly stated that if the petitioner failed to file a case u/s 13B of Hindu Marriage Act at an early date then the de-facto complainant taught lessons by filing criminal cases against the petitioner.

6. Thereafter, the de-facto complainant filed a criminal case against the petitioner on 27.01.2018 before the Learned ACJM at Barrackpore being M.P. Case No. 1410 of 2017 indicating falsely as if the petitioner had committed offence punishable under Sections 498(A)/406/382/511/506 of the IPC.

7. The contention of the petitioner is that the de-facto complainant did not live with the petitioner even for a single day at

her matrimonial house since solemnized of such fake marriage. Marriage was not consummated. De-facto complainant has been residing at her parental house all along and now residing at Nandan Apartment, Khardah, North 24-Parganas. The de-facto complainant filed aforesaid case outside the jurisdiction of the Barrackpore Court suppressing all the material facts and only to harass the petitioner as such it is out and out motivated and abuse of process of law. According, the proceeding is liable to be quashed.

8. Khardah P.S. Case No. 664 of 2017 dated 08.09.2018 vide G.R. No. 6017/17 under Sections 498(A)/406/382/511/506 of the Indian Penal Code, 1860 initiated against the Petitioner is totally false, fabricated and for the purpose of harassing the petitioner in a calculated manner and defrauding money from the petitioner in such meandering way. Hence this application.

9. On the contrary, the Learned Counsel appearing on behalf of the Opposite party no.2 vehemently argued by denying all the allegations of the Petitioner and further submitted that in pursuant to advertisement in the news paper, their marriage was solemnized on 08.02.2012 at a rented house "Kunja Vaban" Palta and marriage was registered under the Special Marriage Act, 1954 before the Marriage Registrar Officer vide certificate Sl. No. 36/2012

dated 08.02.2012. At the time of marriage, the parents of the Opposite party had gifted cash, gold ornaments, clothing and other valuable other articles to the complainant and same was entrusted to the Petitioner.

10. On the date of Bhoubhat ceremony i.e. on 10.02.2012, the petitioner rebuked her for not presenting the bridal gifts according to their choice and status. Soon after marriage the complainant and petitioner/husband started living as husband and wife at a rented house at Ghushipara, P.S. Titagarh, near 17 No. Rly Gate, where she was residing earlier with her parents since she was working as teacher of Kendriya Vidyalaya posted at Ichapur.

11. It was further submitted that due to said wedlock, a male child, namely, Arunavo Kr. Tikadar was born on 25.10.2012. As the complainant was in service, at the request of the complainant, the parents used to reside with them just to give proper care to the child. With the passage of marital life, the petitioner started physical and mental torture upon the complainant. The petitioner also started creating pressure upon the opposite party no. 2 to open joint account with the bank and to purchase property in the joint name and also started insulting the parents of the complainant/opposite party no. 2. The behaviour of the husband was not good and due to his constant

disturbance, the landlord Swarup Dutta asked the opposite party no 2 to vacate the tenanted premises

12. Ultimately, she had to vacate the premises and started living in another rented house from August, 2012 at the house of Sri Binoy Bala. The petitioner never took care of the baby and also never contributed towards the foods, clothes and medicines of the baby child. He had only tendency to squeeze money from the opposite party no. 2. He used to assault the opposite party no. 2.

13. Lastly on 15.12.2015, the petitioner attempted to assault the maid girl of the opposite party no. 2, who tried to intervene the matter. The accused assaulted the complainant and her parents mercilessly. On 19.02.2017, the accused came to the flat of the complainant at Nandan Kanon Ashirbad Apartment which was purchased subsequently by the opposite party no. 2 in the year 2016 and threatened the complainant with criminal intimidation saying that “*Tumi abong tomar chele dujonkei ami prithibi theke chirokaler jonno soriya debo*” meaning thereby “I will remove both you and your son from the earth forever”.

14. Due to such threatening, the complainant became very scared and lodged a General Diary at Khardah Police Station vide Khardah P.S. GD Entry No. 1633 dated 19.02.2017 and thereafter

filed a complaint before the Learned Magistrate under Section 156(3) of the Cr.PC. Subsequently, on the basis of direction of the Learned Magistrate, Khardah Police Station Case No. 664 of 2017 dated 08.09.2018 under Sections 498(A)/406/382/511/506 of the Indian Penal Code, 1860 has been registered against the petitioner and subsequently, after completion of investigation, Investigating Officer submitted charge sheet against the petitioner vide Khardah P.S. Charge Sheet No. 917/2019 dated 29.11.2019 under Sections 498A/406/506 of IPC to face the trial. During investigation, the opposite party no. 2 received her stridhan which was seized by the Investigating Officer. Accordingly, the instant Criminal Revisional application is required to be dismissed.

15. The learned counsel appearing on behalf of the State submitted that the charge sheet has been submitted against the present petitioner and during investigation, stridhan was recovered and handed over to the opposite party no. 2. The statements of witnesses were recorded under Section 161 of the CrPC wherefrom it reveals that the petitioner tortured his wife physically and mentally during staying with the Opposite Party No.2. Therefore, the Criminal Revisional application has no merit and required to be dismissed.

16. Heard the arguments and submissions made by the parties and on perusal of the statements of the witnesses recorded under Section 161 of the CrPC during investigation, it reveals the petitioner was torturing the opposite party no. 2 physically and mentally. It also appears from the statements of the witnesses that the petitioner was involved in the cognizable offence as alleged. During investigation, sufficient materials were collected against the petitioner to establish prima facie case against the petitioner. The contentions of the petitioner regarding innocence and non-consummation of marriage are purely the matter of trial. It is for the complainant to substantiate the allegations by evidence at a later stage in trial.

17. From the perusal of the petition of complaint, it appears that the opposite party no. 2 specifically discloses the commission of cognizable offence committed by the petitioner. She was subjected to physical and mental torture by her husband. Furthermore, it was also alleged that the petitioner never contributed towards foods, medicines and clothing of the child prior to institution of petition of complaint before the Learned Magistrate, is tantamount to prima facie mental tortured upon the Opposite party since husband has moral and statutory obligations towards his wife and child. She had

also lodged a G.D Entry to the police Station being Khardah P.S. GD Entry No. 1633 dated 19.02.2017 prior to initiation of proceedings under Section 156(3) of the CrPC against the Petitioner.

18. Accordingly, there are sufficient prima facie materials against the petitioner available in the case diary. As such, the petitioner herein failed to prove any sufficient or reasonable grounds for allowing his prayer for quashing of the proceedings. Petitioners herein also failed to establish proceeding is frivolous or vexatious or abuse of process of law.

19. We should not forget, the Hon'ble Supreme Court in ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others***¹ has laid down the several principles to be followed by the Court while exercising its power under Section 482 of the Cr.P.C. or under Article 226 of the Constitution of India out of those principles, few are as follows: -

“i) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

¹ (2021) SCC Online SC 315

ii) *Criminal proceedings ought not to be scuttled at the initial stage;*

iii) *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

iv) *The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the Court to be more cautious. It casts an onerous and more diligent duty on the Court;*

v) *While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*

vi) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an*

appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

vii) When a prayer for quashing the FIR is made by the alleged accused and the Court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The Court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the Court has to permit the investigating agency/police to investigate the allegations in the FIR;"

20. In the present case complaint discloses the cognizable offences committed by the Petitioner and furthermore, investigations completed and charge sheet has been submitted against the Petitioner under Sections 498A/406/506 of IPC. The proceeding is at initial stage.

21. In view of the above facts and discussions, this Court finds the instant Criminal Revisional application has devoid of merit and required to be dismissed.

22. Accordingly, **CRR 2516 of 2018** is dismissed. Connected applications, if any, are also thus disposed of.

23. Interim order, if any, shall be vacated.
24. Case diary be return to the Ld. Advocate appearing on behalf of the State.
25. Let the copy of the judgment of this Court be sent to the learned Court below for information.
26. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)