

CRR 4588 of 2023

**Alisar Mallik @ Mullick & Ors.
Vs.
The State of West Bengal & Anr.**

Mr. Debabrata Roy Ms. Karabi Roy Ms. Sarbani Mukhopadhyay Mr. Soumik Mondal	...for the Petitioners
Mr. Sumanta Chakraborty Ms. Dhimoyee Kundu	...for the O.P. no. 2
Mr. Debasish Roy, Ld. PP Ms. Sreyashee Biswas Mr. M.F.A. Begg	...for the State

The petitioners herein have prayed for quashing of the impugned proceeding being G.R. case no. 161 of 2023, presently pending before the learned Additional Chief Judicial Magistrate, Barasat in connection with Madhyamgram Police Station case no. 43 of 2023 dated 19th January, 2023.

The petitioner no. 1 was married with the opposite party no. 2 on 6th February, 2022. Their matrimonial life was not peaceful and the petitioner/wife was allegedly driven away from her matrimonial home and all her stridhan articles and valuable things were kept in their custody. As reconciliation between the parties failed, the petitioner was compelled to lodge a complaint on 2nd September, 2022 to the Howrah Women Police Station, being case no. 25 of 2022 under Section 498A/406/34 of the IPC read with Section 3 and 4 of the Dowry Prohibition Act. It is further case of the petitioner that during investigation, on 10th

September, 2022, the stridhan articles were seized by the police from the residence of the opposite party no. 2 herein. After completion of investigation, police has submitted charge-sheet in the said proceeding against four FIR named accused persons including the husband of the petitioner herein.

As a counter-blast, the husband of the petitioner namely Sk. Shah Alam on 22nd September, 2022 filed a complaint before the learned Additional Chief Judicial Magistrate, Barasat under Section 156(3) of the Code of Criminal Procedure, which was subsequently treated as an FIR. The allegation levelled in the complaint is that on 16th July, 2022 at 9 P.M. the petitioners along with some anti-social elements went to the house of opposite party to discuss some issues, when the trouble cropped up and the complainant/opposite party herein/husband was assaulted, accused person squeezed his testicles and his room was ransacked and it was further alleged that they took away a bag containing gold ornaments.

Being aggrieved by the said proceeding, learned counsel for the petitioners submits that the allegation levelled against them is manifestly attended with mala fide and instituted maliciously with an ulterior motive for wrecking vengeance on the petitioners with a view to spite them due to private and personal grudge. His further contention is that the court below without following the law laid down by the Apex court in **Priyanka Srivastava and another Vs. State of U.P. and others, AIR 2015 SC 1758** exercised his power under Section 156(3) of the Code and on the basis of which the police started investigation and ultimately submitted charge-sheet.

It is further submitted that the opposite party no. 2 herein/complainant while filing his application for restitution of conjugal life, she has mentioned a different story about the alleged incident dated 16th July, 2022. His further contention is that the present case is a counter blast of the complaint lodged by the petitioner and even without disclosing the FIR maker's relationship with the petitioner particular petitioner no. 1. He further submitted that while filing complaint, he did not make any specific averments as regards the compliance of Section 154(1) and 154(3) of the Code and as such, the direction of the court below in registering FIR, is bad in law. He further submits that uncontroverted allegation made in the complaint and the evidence collected in support of the same, did not disclose the commission of any offence and make out a case against the accused, if it is read with the application of the opposite party no. 2 in MAT suit no. 86 of 2022 which is pending before the learned Civil Judge, Junior Division, 1st Court, Barasat. In fact, the allegations levelled in the complaint are so absurd and inherently improbable, on the basis of which no prudent person can ever reach to a just conclusion that there is sufficient ground for proceeding against petitioners and other persons and as such, further continuance of the present proceeding will be a mere abuse of process of the court and accordingly, he prayed for quashing of the impugned proceeding.

Learned counsel for the opposite party raised objection against the prayer made by the petitioners contending that the argument made on behalf of the petitioners that there was non-compliance of the law laid down by the Apex court in **Priyanka**

Srivastav's case (*supra*) is incorrect. Moreover, after due compliance of Section 154(1) and 154(3), the FIR maker/opposite party proceeded for filing the complaint under Section 156(3) of the Code before the court below. His further contention is that the victim was treated in a private hospital and in spite of handing over the injury report to the police, they have not dealt with the same properly during the course of investigation. He further submits that the proceeding is at an early stage and it would not be proper to quash the impugned proceeding at its threshold without going for the trial.

Learned counsel for the State placed the case diary and pointed out the statements that were recorded during investigation but she candidly submitted that no injury report was seized during investigation.

I have gone through the materials placed in the case diary and on perusal of the statements made therein, it appears that the allegations levelled against the present petitioners are omnibus in nature and no specific allegation has been attributed to each of the accused persons. Moreover, the allegation made in the complaint, as well as the three statements of witnesses recorded during investigation, has not been substantiated during investigation. It further appears that even though a xerox copy of the treatment sheet has been placed in the case dairy, it does not disclose the name of the assailant nor it discloses the nature of the injury.

In **Devendrappa's case, (2002) 3 SCC 89**, Supreme Court categorically held that judicial process should not be an instrument of oppression or needless harassment. Court should

be circumspect and judicious in exercising discretion and should take all relevant facts before issuing process otherwise it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly.

Now when I examine the facts of the present case in the light of settled principles of law, it is clear that in the present case parties are related as husband and wife and as in laws. Matrimonial discord is going on between the parties for a considerable period of time, which is clearly manifested in the first line of second paragraph of the FIR. The incident which is the basis of investigation is dated 16.7.2022 which is alleged to have taken place at the house of complainant when the alleged accused persons went to his house to make an amicable settlement and during hot altercation the incident allegedly occurred. Admittedly petitioner/wife herein prior to the alleged occurrence initiated criminal proceeding against instant FIR maker and his relatives under Section 498A/406/34 of the IPC.

However, no specific allegation has been attributed during investigation against any of the accused and the sum and substance of allegation is all the accused persons squeezed the testicles of complainant, even though such allegation as well as allegation of ransacking or committing theft, have not been substantiated during investigation by cogent evidence. Therefore the omnibus, unsubstantiated allegations made in the instant proceeding, clearly leads to the conclusion that it has been initiated by the complainant with an ulterior motive due to private and personal grudge.

In **Bhajan Lal's** case, **(1992) Supp(1) SCC 335**, Supreme Court laid down the law to quash a criminal proceeding and category (7) of paragraph 102 reads as follows:-

“102(7): where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Above category (7) is clearly attracted in the facts and circumstances of the present case. Therefore, present case is a fit case to exercise jurisdiction under Section 482 of the Code of Criminal Procedure and quash the criminal proceeding.

In such view of the matter, the impugned proceeding being G.R. case no. 161 of 2023, presently pending before the learned Additional Chief Judicial Magistrate, Barasat in connection with Madhyamgram Police Station case no. 43 of 2023 dated 19th January, 2023 is hereby quashed qua the petitioners namely, **(1) Alisar Mallik @ Mullick, (2) Abul Kalam Mallick, (3) Rousanare Mallick @ Row Shanare Mallick.**

Accordingly, CRR 4588 of 2023 stands allowed.

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

(Dr. Ajoy Kumar Mukherjee, J.)