

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.R.R. 4741 of 2022

**Subhas Adhikary & Ors.
Vs.
The State of West Bengal & anr.**

For the Petitioners : Mr. Prabir Kumar Mitra
Ms. Subhanwita Ghosh

For the opposite party No.2 : Mr. Md. Manwar Ali

For the State : Mr. Madhusudan Sur
Mr. Manoranjan Mahata

Heard on : 10.02.2025

Judgment on : 19.02.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. The petitioner herein by filing the present application has taken exception against the impugned proceeding being GR Case No. 1006 of 2018 arising out of Domjur P.S. Case No. 150/2018 dated 22.02.2018.
2. On 22nd February, 2018, the opposite party no.2 herein lodged the written complaint by which the present proceeding has been initiated

under section 498A/323/34 of the IPC read with section 3/4 of Dowry Prohibition Act against the petitioners who are the in-laws of the opposite party no. 2./complainant.

3. In the written complaint the opposite party no. 2 herein alleged that the petitioners demanded money from the father of the opposite party no.2 and when she expressed her inability to bring money from her parents, she was mentally and physically assaulted by the petitioner no.2 and 3 and thereafter she was driven out from her home by the petitioners. She further alleged that she was pregnant at the relevant point of time and she was apprehensive that the petitioners would cause her harm and therefore, she requested the police personnel for intervention and thereafter investigation was started by police on the basis of complain.

4. Aforesaid investigation culminated into charge sheet and the charge was framed against the accused persons on 25th January, 2019, under section 498A /323 IPC read with section 4 of the Dowry Prohibition Act. Thereafter evidence of CSW-1 was taken in part on 1st April 2022.

5. Being aggrieved by the impugned proceeding the petitioners contended that from time to time, opposite party no.2 and her husband continued to cause annoyance in the family for having their unjustified demand and on one occasion the opposite party no.2 threatened the petitioners to implicate with false case of molestation. In fact the opposite party no.2 continuously harassed and traumatized petitioners, particularly the old and infirm petitioner no.1, for which they were constrained to lodge general diaries on several occasion.

6. Petitioners further submit that they are absolutely innocent and they have been falsely implicated. The story as levelled in the FIR is completely concocted and essentially in the nature of a counterblast case. It has been further contended by the petitioners that the maliciousness of the opposite party no.2 is evident on the face of complain, in as much as the opposite party no.2 has been happily residing at the house of the petitioner no.1 since the date of her marriage and at no point of time she was thrown out in any manner whatsoever. Thus the proceeding has been initiated with *malafide* intention which is also frivolous in nature and which has been made by opposite party no.2 in connivance with her husband to harass the petitioners falsely for wrecking vengeance against them and to compel them to part ways with the ancestral home.

7. Ld. Counsel for the petitioner further argued that it is trite law that in order to lodge proper complain, mere mentioning of the sections or the language of those section is not be all and end all of the matter. It is required to be brought on the notice of the court about particulars of offence committed by each and every accused and the role played by each of them in committing the alleged offence.

8. He accordingly submits that the instant case is not only patently absurd, but cloaked with *malafide* and unjustness and it would be an abuse of the process of the court to allow the impugned proceeding to continue any further. He further submits that it would be travesty of justice, if the accused is relegated to trial and is asked to prove their defence before the trial court. He accordingly submits, since the First Information Report in the instant case do not disclose commission of the

offences alleged and the allegations are frivolous, vexious and oppressive, the instant proceeding is liable to be quashed.

9. Mr. Ali, Ld. Counsel appearing on behalf of the opposite party No.2 submits that there are sufficient materials to implicate the present petitioner and the trial has already been commenced and this is not the appropriate case where the court can invoke his jurisdiction under section 482 of the Code to quash the proceeding.

10. Mr. Sur. Ld. counsel appearing on behalf of the State placed the case Diary and submits that the son of the petitioner No.1 who is also the husband of the defacto complaint has made statement under section 161 of Cr.P.C. during investigation, wherein he has specifically implicated the petitioners for commission of aforesaid cognizable offences. Other witnesses also corroborated his statement during investigation and as such the truth will come out only at the end of trial and this is not a fit case where the proceeding can be quashed invoking courts jurisdiction under section 482 of the Code of the Criminal Procedure.

11. I have considered submissions made by the parties.

12. On perusal of the written complaint it appears that the defacto complaint has made specific allegations against the petitioners regarding alleged demand of dowry and she further alleged when she refused to bring the same, each of the accused persons had inflicted physical and mental torture upon her. The husband of the defacto complaint namely Kinkor Adhikary in his statement under section 161 has specifically attributed allegations against the present petitioners for commission of offence of physical and mental torture upon the defacto complainant on the ground of

refusal to bring dowry. During investigation prosecution has also recorded statement of other charge sheeted witnesses, who more or less corroborated the statement made by the husband of defacto complainant.

13. In **Bhajanlal's Case, 1992 Supp (1) SCC 335** the supreme Court stated that though it may not be possible to lay down any precise, clearly defined, sufficiently channelized an inflexible guideline or rigid formula or to give exhaustive list of myriad of cases, when the power under section 482 should be exercised, but there are circumstances where the court may be justified in exercising the jurisdiction which includes, where the FIR does not prima facie constitute any offence, does not disclose a cognizable offence justifying investigation by the police, where the allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion, that there are sufficient grounds for proceeding against the accused, where there is an express legal bar engrafted in any of the provisions of the Code and where a criminal proceeding is manifestly attended with *malafide* 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.

14. Ld. counsel appearing on behalf of the petitioner referring the cases of **Varala Bharat Kumar and others Vs. The State of Telangana and others**, reported in **AIR 2017 SC 4434** and **Geeta Mehrotra and anr., Vs. State of U.P. and anr.**, reported in **AIR 2013 SC 181** contended that even after framing of charge, the court can invoke the power under section

482 Cr.P.C. if it finds that the parameters laid down in ***Bhajanla's Case (supra)*** has been fulfilled.

15. There is no quarrel with the proposition of law that there is no bar in a proceeding under section 482 Cr.P.C. to quash a criminal proceeding in the interest of justice and to prevent an abuse of the process of the court, even if the criminal proceeding is part heard and some witnesses have been examined. But here in this case, the charges have not only been framed against the accused persons but the accused persons/petitioners are facing trial and having regard to the totality of the facts and circumstances as stated above, it can hardly be said that the investigation and the follow up steps are so patently defective or erroneous that allowing the trial to progress will cause a miscarriage of justice. This is also because at the trial stage, it is inappropriate to delve deep into the records and it is not part of the business of the High court to ascertain what the outcome of the trial could be. The limited scope that the law, through judicial precedent provides is to look at the allegations in the FIR and the materials collected in the course of investigation without rebuttal thereof by the accused and to form an opinion upon consideration thereof, whether any cognizable offence has been disclosed or not. The proceeding cannot be scuttled at this stage, unless it is manifested from the materials that further continuance of the proceeding would be an abuse of the process of court.

16. Needless to say at this stage I am not supposed to look into the correctness of the allegations made in the FIR, when ex facie the allegations in the FIR and the materials collected during investigation discloses an

offence. Now whether the petitioners have committed the offence or not has to be decided upon trial in the criminal proceeding.

17. It is well settled that at the stage when the High Court considers such prayer under section 482, the allegations in the FIR and materials collected during investigation must be read as they stand and it is only if on the face of the allegations disclosed from the materials in the Case Diary, that no offence as alleged has been made out, that the court may be justified in exercising its jurisdiction to quash.

18. Though the petitioners argued much that present FIR has been lodged by the opposite party no.2 in order to wreck vengeance on the petitioners and with a view to spite them due to private and personal grudge and has been lodged as a counterblast, but it is well established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence, does not become vitiated on account of *malafides* of the FIR maker. Even if the complaint has been lodged only on account of personal animosity that by itself will not be a ground to discard the complaint, containing serious allegations which have to be tested and weigh during trial.

19. Thus mere allegation of *malafide* against informant may not be enough to quash a criminal proceeding. In ***Bhajanlal's Case (Supra)*** in para 104, the court held that even in a situation where false and vexous charges have been maliciously attributed against the accused persons, the remedy of the accused persons against the person/complainant, who dishonestly makes such false allegations, if any, is to proceed against such

person under the relevant provisions of the IPC namely under section 182 or 211 or 500, besides becoming liable to be sued for damages.

20. In view of aforesaid facts and circumstances of the case and materials collected so far during investigation, I find that this is not a fit case where the criminal proceeding can be quashed invoking jurisdiction under section 482 of Cr.P.C.

21. CRR 4741 of 2022 thus stands dismissed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)