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CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CRR 33 of 2024

Jagadish Sinha & Ors.
Vs.
The State of West Bengal & Anr.

Mr. Swarup Das
Mr. Satyajit Paul ...for the petitioners

Mr. Bhaskar Roy Mahashaya ...for the O.P. no. 2

Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Tapan Bhattacharjee
...for the State

This is an application under Section 482 of the Code of Criminal Procedure wherein all the petitioners/accused persons have prayed for quashing the proceeding being Bhaktinagar Police Station case no. 947 of 2021 dated 26th July, 2021 where all of them were initially booked under Section 498A/315/307/325/34 of the Indian Penal Code.

Learned counsel for the petitioners submits that after perfunctory investigation, the investigating agency has submitted charge-sheet under Section 498A/323/34 of the Indian Penal Code against all the petitioners. He further submits that the petitioners are innocent and they have been falsely implicated with the present proceeding. The allegations levelled against them are omnibus in nature and no specific overt act has been attributed against any of the petitioners in the FIR. He further

submits, the allegations levelled under Section 307/315/325/34 of the Indian Penal Code have not been established during investigation and for which, the petitioners are not being charge-sheeted under the above-mentioned sections. He further submits that even the offence punishable under Section 498A or under Section 323 of the IPC have also not been established against the present petitioners as the ingredients of “cruelty” as defined in explanation to Section 498A has also not established in the instant proceeding, in the absence of causing any grave injury or danger to life, limb or health and/or in the absence of any allegation of harassment with a view to coercing her to meet any unlawful demand. The injury report states that injury is simple in nature, which also does not disclose the name of assailant.

Petitioner’s further contention is that learned court below without considering the materials available in the record as well as in the case diary, has taken cognizance upon the accused persons. He further submits that the petitioner no. 2 is the brother-in-law, petitioner no. 3 is the mother-in-law and petitioner no. 4 is the married sister-in-law of defacto-complainant, who are no way connected with the alleged offence. Accordingly, the petitioners have prayed for quashing the impugned proceeding.

Learned counsel for the private opposite party submits that the allegations levelled against the petitioners are well-established during investigation and the Trial court on careful consideration

of the materials on record has taken cognizance upon the offence and thereafter, framed charge against all the accused persons under Section 498A/323/34 of the Indian Penal Code. Therefore, the truth will reveal only after the conclusion of the trial and at this stage, the proceeding should not be quashed by this court invoking its jurisdiction under Section 482 of the Code of Criminal Procedure.

Learned counsel for the State placed the case diary and pointed out that the statements recorded under Section 161 of the Code as well as the injury report dated 21st July, 2021.

Having heard the learned counsel on behalf of all the parties and also considering the materials available in the case diary, which was collected during investigation, it appears that a prima facie case against the husband, has been well-established. However, so far as the allegation levelled against the other petitioners who are in laws, are omnibus in nature and appears to have been implicated being the family members of the husband. From the statement recorded under Section 161 of the Code or from the injury report, no specific overt act has been attributed against the petitioner nos. 2 to 4. In order to constitute the offence against the accused persons, the basic requirement is that the role played by each accused in committing alleged offence is to be depicted specifically and should prima facie establish from the materials collected during investigation.

Here in the instant case, I find from materials collected during investigation that petitioner nos. 2 to 4 have been dragged into the web of crime for the simple reason that they are the members of husband's family. The statement recorded during investigation clearly demonstrates that no substantial or specific allegations have been made against petitioner nos. 2 to 4 other than stating that they used to instigate defacto-complainant for demanding more dowry.

It has been well settled through judicial pronouncements that a mere reference to the names of family members in a criminal case arising out of a matrimonial dispute without specific allegations indicating their active involvement should be nipped in the bud as there is often a tendency to implicate all the members of the husband's family when domestic disputes arise out of a matrimonial discord. It has also been held that such generalized and sweeping accusations unsupported by evidence or particularized allegations cannot form the basis of criminal prosecution.

From the materials available in record, I am convinced that the involvement of petitioner nos. 2 to 4 herein by the complainants who are her close relatives is with an oblique motive. If I have to accept the submissions made on behalf of the opposite parties that if one reads the contents of FIR between the lines, it constitutes offence against the petitioner nos. 2 to 4, even though the materials collected during investigation does not

disclose their complicity with the alleged offence and that I am to accept the averment in the FIR mechanically, which many a times are prepared with the services of professionals and drafted by a legal mind, then the very conferment of the inherent power conferred under Section 482 of the Code of Criminal Procedure upon the High Court may render otiose. However, this does not mean that any woman who has suffered cruelty in terms of what has been contemplated under Section 498A of the IPC should remain silent and forbear herself from making a complaint or initiating any proceeding under Section 498A against the relatives of the husband. But at the same time, I must not encourage a case like the present one, where no allegation under Section 498 or Section 323 has at all established even prima facie against the petitioners herein during investigation.

Having considered the overall facts and circumstances of the case, I am convinced to quash the impugned proceeding being Bhaktinagar Police Station case no. 947 of 2021 dated 26th July, 2021 corresponding to G.R case no. 3856 of 2021 qua the petitioner nos. 2 to 4 namely, Kamalesh Sinha @ Krishna, Basanti Sinha and Lipika Sinha.

CRR 33 of 2024 is accordingly disposed of.

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.)