

30.06.2026

Ct. No. 34

S/L No.4

sg

CRR 5379 of 2024

in

I.A. No. CRAN 1 of 2025, CRAN 2 of 2026

In the matter of : **Lipan Basak**

Mr. Shibaji Kumar Das

Ms. Deblina De

Ms. Maitrayee Das

... Petitioner.

Mr. Dhananjay Banerjee

Mr. Archan Dutta

Mr. P. S. Mishra

...for the opposite party no.2.

Ms. Samira Grewal

...for the State.

1. This revisional application has been filed for quashing of the proceeding in connection with G.R. 1822 of 2024 arising out of Kalna Police Station Case No. 823 of 2024 under Sections 85/318(4) of BNS, 2023 pending before the learned Chief Judicial Magistrate, Kalna.

2. It is submitted by the learned advocate representing the petitioner that the marriage between the petitioner and the opposite party no.2 was solemnized on 16th April, 2007 and they led conjugal life thereafter and were blessed with a baby girl namely Tridha Basak who is presently aged about eight years. Subsequently because of marital discord the relationship got strained and they started living separately since 1st April, 2022. Thereafter since the matrimonial relationship broke down irretrievably both the parties decided to get separated from each

other and accordingly they filed a suit for Mutual divorce under Section 28 of the Special Marriage Act on 29th November, 2023 before the Court of learned Additional District Judge, Kalna, District Purba Burdwan being matrimonial suit no. 447 of 2023. The date was fixed for hearing before the learned Court when both parties filed their respective affidavit-in-chief before the learned Court.

3. After the reconciliation process failed, the Learned Court examined both parties on dock and thereafter passed a decree of divorce on 27th June, 2024 and 9th August, 2024 respectively whereby such matrimonial suit being no. 427 of 2023 was decreed on mutual consent. Long thereafter a written complaint was lodged by the opposite party no.2 herein on 7th July, 2024 before the Kalna Police Station against present petitioner alleging that since after marriage she was physically and mentally tortured and obtained her signature on a divorce paper and the petitioner tried to drove her out from the house on 6th July, 2024 when she protested, she was assaulted by the accused persons. On the strength of the complaint petitioner was served with a notice under Section 35(3) of the BNS, 2023 which he duly complied and also produce copy of the decree of divorce on mutual consent passed by the competent Court of law. Despite that, investigating officer filed the charge sheet on 31st July, 2024 under Section 85 of BNS, 2023 and the learned Magistrate , kalna took cognizance of the same.

4. It is submitted by the learned advocate representing the petitioner that in the written complaint the opposite party no.2

entirely suppressed the fact of grant of decree of divorce by the District Judge on 27th June, 2024 and the entire allegation leveled against him are only in order to harass the petitioner which is not maintainable in the eye of law.

5. That apart the Opposite party no.2, voluntarily not only signed on the paper but appeared before the Court and after considering her evidence and the affidavit-in-chief filed by the learned Court, such decree of divorce was passed. Therefore the allegations are absolutely false and the learned court without applying his judicial mind took cognizance and hence prayed for quashing of proceeding.

6. Learned advocate representing opposite party no.2 on the other hand raises objections and submits when the charge sheet has been submitted after prima facie materials are found petitioner must face the learned trial Court.

7. Learned Prosecution submitted the memo of evidence and submits that during investigation the I.O. visited the place of occurrence and also examined the witness. Therefore, prima facie materials are against the petitioner. Accordingly prayed for dismissal of this revisional application.

8. Having heard the learned counsels and going through materials-on-record and the contents of the complaint lodged before the Kalna Police Station by the opposite party no.2 it is found that the opposite party no 2 though admitted to sign on some paper and to appear in the court did not disclose about the mutual divorce granted by the court after she appeared on dock before the court .On the contrary she alleged to be advised by

her husband to go for mutual divorce and in full faith She appeared before the Court and put her signature on the paper . She further admitted that as tutored by husband she stated something before the learned Court and after that she was asked by the petitioner to leave the matrimonial house. She claimed that it was informed to her by the husband that the mutual divorce has been granted and she has not right to stay her in the matrimonial house and accordingly on 6th July, 2024 petitioner and his second wife assaulted her and tried to oust her from matrimonial house.

9. On perusal of the Charge sheet submitted by the investigating officer no seizure of the decree passed by the learned court can be seen and no whisper is made regarding grant of decree of mutual divorce . That apart no further proceeding has been initiated before any Court that such decree was obtained by force or prayed for setting aside of such decree of divorce.

10. This Court is unable to accept the contention of both the learned advocates representing opposite party no.2 as well as prosecution that such materials were found against the petitioner in course of investigation to attract Section 85 of BNS, 2023 since in terms of decree of divorce granted by the learned court there remains no marital status between the parties .

11. Therefore, in terms of the specific provision as enumerated in Section 85 of BNS Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which

may extend to three years and shall also be liable to fine and hence no benefit can be claimed under such provision after the decree of divorce is passed on mutual consent.

12. This Court is unable to agree with the contention that the opposite party no.2 being tutored stated something before the court without being aware of the content of the joint petition or the contents of the affidavit-in-chief which was tendered before the court. Furthermore she was examined by the court on dock and the learned Court after being satisfied about her willingness proceeded with the matter and passed decree of divorce which has not yet been challenged before any other forum and is still subsisting.

13. It is settled proposition of law the High Court can exercise its power under Section 482 Cr.P.C (or Section 528 BNSS) to quash criminal proceedings, in cases, where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

14. It is no more res integra that the inherent power of this court to be exercised in order to prevent the abuse of the process of law and to secure justice. The Hon'ble apex court in the case of State of Haryana vs Bhajanlal elaborated the situations where such power can be exercised by quashing the complaint /charge sheet.

15. Therefore, on careful consideration of the entire facts and circumstances of the case this Court do not find any reason to

allow the proceeding to continue as it would be sheer abuse of process of law. Hence the proceeding pending before the Court is liable to be quashed against the petitioner.

16. Hence this revisional application being CRR 5379 of 2024 stands allowed. All other connected applications are disposed of.

17. The entire Proceeding being G.R. 1822 of 2024 arising out of Kalna Police Station Case No. 823 of 2024 under Sections 85/318(4) of BNS, 2023 pending before the learned Chief Judicial Magistrate, Kalna is hereby quashed.

18. Urgent Certified copy of the order be provided to the Parties subject to fulfilment of all required formalities.

[Chaitali Chatterjee (Das), J.]