
(2013) 07 CAL CK 0126
In the Calcutta High Court
Case No : C.R.R. No. 3138 of 2004

Amit Das and Others

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200
Penal Code, 1860 (IPC) — Section 120B, 404, 406, 420, 449

Citation : (2013) 07 CAL CK 0126

Hon'ble Judges : Toufique Uddin, J

Bench : Single Bench

Advocate : Jayanta Kumar Das and Mr. Sujit Bhuinya, for the Appellant; Benoy Panda, for the Respondent

Judgement

Toufique Uddin, J.—This revision arose out of prayer for quashing of the case being No. 5C of 2003 against the present petitioners by the complainant as well as the order dated 18.10.2004 passed by the learned Sub-Divisional Judicial Magistrate, Tamluk in case No. 5C of 2003 against the petitioners. In the background of this matter the fact in a nutshell is that the opposite party No. 2 filed a complaint petition in the court of the learned Chief Judicial Magistrate, Midnapore against the petitioners and opposite party Nos. 3 to 8. The case was registered as M.P. case No. 252 of 2002 to the effect that the complainant married Purnima Bhowmick daughter of late Indu Bhusan Bhowmick of Village Podumkhana, P.O. Dakshin Srikrishnapur, P.S. Nandakumar, District Purba Medinipur and the marriage between the complainant and said Purnima Bhowmick was solemnized on 13.12.2000, according to Hindu Rites. The complainant's wife was in service of West Bengal Health department as a Health Assistant of modified Leprosy Census Unit, Tamluk, posted at Deuli Sub-centre, Moyna.

2. The accused Nos. 2, 5, 6 and 8 are the sister-in-law of the complainant i.e., the married sister of the complainant's wife Purnima Bhowmick and the accused

Nos. 1, 3 and 7 are the Brothers-in-law of the complainant i.e., the husbands of the accused Nos. 2, 5, 6 and 8 respectively. The accused no. 4 is the son of the accused No. 3. The accused Nos. 9, 10, 11 and 12 are the associates of other accused.

3. After a few months of marriage it was detected that the complainant's wife was suffering from illness and ultimately it was diagnosed through C.T. Scan and other Clinical tests that she was suffering from Cancer.

4. The complainant got his wife admitted in Christian Medical College and Hospital at Vellore on 7.4.2001. The patient was required to stay there for about six months for her treatment. In the meantime, the complainant came back from Vellore on 15.4.2001. After coming back from Vellore the complainant regularly kept information of the wife through telephone in the lodge at Vellore where accused Nos. 1 to 8 were staying in the lodge. After some days, the complainant did not get any news of his wife as the accused No. 1 to 8 left the same. On suspicion the complainant immediately rushed to Vellore and he came to know that the accused no. 1 to 8 after getting the complainant's wife released from hospital at Vellore, had taken to their house. When the complainant went there at the house of accused No. 1 and 3, he was manhandled. The accused Nos. 3, 4 and 7 and others were taking away the belonging of the complainant and complainant's wife from the house at Daharpur, Tamluk.

5. The complainant came to know that his wife has been kept confined by the accused no. 1 in his house at Gourangapur under Purusattampur taking the opportunity of her serious illness and the matter was reported to Panskura Police Station and he died on 8.7.2001. The accused No. 1 took her dead body to Pudumkhana and cremated there without any information to the complainant being husband.

6. The complainant applied for death certificate of his wife Purnima in the office of Purusattampur Gram Panchayat. Death Certificate of the aforesaid wife was issued to the complainant. The accused No. 1 suppressing the place of death of the complainant's wife obtained death certificate in collusion with from the office of Byabarttarhat Gram Panchayat showing the place of death of the complainant's wife at Pudumkhana.

7. The accused nos. 1 to 8 in collusion with each other and also in collusion/ conspiracy with other accused persons with the help of death certificate containing false place of death and suppressing the fact of marriage of the complainant's wife with the complainant have withdrawn money from Post Office and Bank lying in the name of the complainant's wife since before her marriage with the complainant.

8. The accused no. 1 had full knowledge that the complainant's wife had not died at Pudumkhana but in spite of that false certificate was issued showing the place of death of the complainant's wife at Pudumkhana.

9. The complainant himself and his Advocate sent letters to accused nos. 9 and 10 not to disburse the amount from the Account of Purnima Bhowmick (Bag) to any person as the complainant as husband of Purnima is only legal heir but accused Nos. 9 and 10 ignoring the letters of the complainant and his Advocate have paid the amount from the account of the complainant's deceased wife to the accused no. 1, 2 and 4 in collusion with them in order to make wrongful gain by them.

10. The accused No. 1 to 8 made attempt to withdraw money from the service place of the complainant's wife but they could not succeed as the salary disbursing officer of her service place and full knowledge of her marriage with the complainant.

11. The complainant's wife before going to Vellore for treatment, executed a "Will" in favour of the complainant in respect of her all moveable and immovable properties and probate case being No. 29 of 2001 is still pending. The complainant informed the Panskura Police Station which refused to accept the complaint but ultimately some days ago police has asked the complainant to bring order from Court of law.

12. The accused no. 1 to 8 in collusion with each other and by criminal conspiracy with other accused persons have committed the offence of dishonest misappropriation of the property of the deceased wife.

13. A complainant was lodged before the O.C. Panskura police station for investigation after treating the same as F.I.R.

14. On 17.8.2002 the Officer-in-Charge Panskura Police Station received the order of the learned Magistrate and started the case.

15. On 30.6.2003 after investigation, police has submitted final report being No. 12 of 2003 dated 22.4.2003.

16. On 22.9.2003 the opposite party no. 2 filed Narazi petition by challenging the final report.

17. On 29.9.2003 the learned Magistrate was pleased to direct the complainant to produce his witnesses for examination u/s 200 Code of Criminal Procedure and G.R. Case No. 469 of 2002 was directed to be converted to 5C/2003.

18. On 5.8.2004 on examination of witness, the learned Magistrate ordered for issuance of summons.

19. The petitioners stated that Kumari Purnima Bhowmick never married Kajal Bag and there is no document to show that the said Kajal Bag is the husband of Kumari Purnima Bhowmick who died on 8.7.2001.

20. The said Kajal by false pretext withdrew the service benefit of Purnima Bhowmick. The petitioners have not committed any offences punishable under Sections 404, 406, 420, 449 and 120B of the Indian Penal Code.

21. I have considered the submissions made by both the parties.

22. The learned Advocate of the petitioner drew my attention to the supplementary affidavit at page 47 and stated that said Kajal Bag filed other suit No. 91 of 2008 before the learned Civil Judge (Junior Division), Tamluk with prayer, inter alia, made therein to the effect that Purnima Bhowmick (Bag) be declared as legally married wife of Kajal Bag and that suit is still pending. Further he submitted that the probate case being No. 29 of 2001 filed by the complainant is still pending. So saying the learned Advocate contended that the death gratuity or so was collected fraudulently by the complainant from the office wherein Purnima Bhowmick used to serve. His other submission is that the complainant lodged a writ petition being W.P. No. 28537 (W) of 2008 before the Hon'ble High Court wherein His Lordship by an order dated 9.7.2009 directed the petitioner to deposit the entire amount received by him from the Chief Medical Officer of Health, Purba Medinipur or otherwise as heir of the said deceased, in a fixed deposit account with any nationalized bank. So, summing up his conclusion, the learned Advocate of the petitioner contended that until and unless by a proper decree is retained in a civil court, it cannot be established that Purnima Bhowmick is wife of Kajal Bag. The prayer of the present petitioner is not tenable. So, the continuance of the impugned proceeding being No. 5C/2003 is not maintainable.

23. The learned Advocate of the State also drew my attention to the supplementary affidavit filed by the learned Advocate of the petitioner and practically he saw eye to eye with the submission made by the learned Advocate of the petitioner. He submits that a decree of a civil court is naturally binding on a decision of a criminal court. Therefore, until and unless a decree of the civil court is obtained, no relief as claimed in the complaint case which was borne out of a Narazi petition can be extended to the complainant.

24. Days" together the records shows that the respondent no. 2 is not attending the case.

25. Further I take into account the factum that although on the basis of Narazi petition the complaint case referred to above was borne but the fact remains that in the G.R. Case No. 469 of 2002 after investigation police submitted final report.

26. This being the position and having no counter say of the private respondent no. 2, I find merit in the submission made by the learned advocate of the petitioner.

27. Accordingly, I think that the present revision is required to be allowed.

28. Therefore, the revision stands allowed and proceedings being No. 5C/2003 pending before the learned Chief Judicial Magistrate, Tamluk, Purba Medinipur, stands quashed. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.