

**(2019) 05 CAL CK 0073**

**In the Calcutta High Court**

**Case No :** Criminal Revision (CRR) No. 3472 Of 2018 With CRAN No. 1152 Of 2019

**Biswajit Singha Roy & Anr Vs State Of West Bengal & Anr ?**

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**Date of Decision :** 22-05-2019

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 161, 482  
Indian Penal Code, 1860 — Section 34, 406, 498A, 506  
Constitution Of India, 1950 — Article 226

**Citation :** (2019) 05 CAL CK 0073

**Hon'ble Judges :** Madhumati Mitra, J

**Bench :** Single Bench

**Advocate :** Apalak Basu, Sarosij Dasgupta, Sutapa Mitra, Anirban Tarafdar, Rumi Chakraborty, Rana Mukherjee, Debjani Sahu

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## **Judgement**

Madhumati Mitra, J

The petitioners have approached this Court by filing an application under Section 482 of the Code of Criminal Procedure praying for quashing of the proceedings being G.R. Case No. 1063 of 2018 arising out of Baranagar Police Station Case No. 123 of 2018 dated February 24, 2018 under Sections 498A/406/506/34 of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas.

The present petitioners are the parents-in-law of the present opposite party no.2. The opposite party no.2 is the defacto-complainant of the criminal proceedings pending before the learned Magistrate.

Brief facts of the case which led the present petitioners to file the present application for quashing of the criminal proceedings pending before the learned Magistrate may be narrated hereunder:-

The present opposite party no.2 being the daughter-in-law of the present petitioners lodged an FIR against the petitioners and their son on February 24, 2018 with Baranagar Police Station wherein the opposite party no.2 stated that she was married to Biprajit Sinha Roy, son of the present petitioners on May 3,

2015 under the provisions of Special Marriage Act. Their social marriage was solemnized on 18.11.2015 and since then she started to reside at her matrimonial home.

It has been stated by the complainant that at the time of marriage her father gave valuable articles as "stridhan" to her husband and FIR contained a separate list of "stridhan" articles. She has alleged that during her stay at her matrimonial home she was subjected to cruelty and torture. Being failed to bear physical/mental torture she left her matrimonial home on February 3, 2016. The complainant has further stated that she was suffering from trauma and she sought for assistance of SWAYAM, an NGO. She lodged a general diary at Belghoria Police Station on March 05, 2017. Thereafter she lodged a written complaint with the West Bengal Mahila Commission on February 20, 2017. It has been specifically alleged in the FIR that her husband made a conspiracy with his family members and married her with a view to grab her "stridhan" articles.

On the basis of the FIR lodged by the opposite party no.2, Baranagar Police Station Case No. 123 of 2018 dated February 24, 2018 under Sections 498A/406/506/34 of the Indian Penal Code was started against the FIR named accused persons. Investigation ended in submission of charge sheet against the FIR named accused persons, namely, the present petitioners along with their son for commission of alleged offences punishable under Sections 498A/406/506/34 of the Indian Penal Code.

The petitioners have prayed for quashing of the proceedings initiated on the basis of the FIR lodged by the opposite party no.2 on the ground that they have been falsely implicated in the instant case and no specific allegation has been made out against them in the FIR.

I have carefully gone through the materials placed on record. I have also perused the judgments as cited at the Bar. I have considered the rival submissions as made by learned Additional Public Prosecutor, learned advocate appearing for the petitioners as also learned advocate appearing for the opposite party no.2. I have also consulted with the case diary.

During the course of hearing learned advocate appearing for the petitioners has contended that the main purpose of lodging the FIR against the petitioners by the opposite party no.2 is to harass them unnecessarily. He has invited the attention of the Court to the date of lodging the FIR and contended that the FIR was lodged only on February 24, 2018 though as per her own statement made in the FIR the complainant left her matrimonial home on February 3, 2016. It has been strongly contended that the allegations contained in the FIR are not only false but also suppression of material facts. He has drawn the attention of the Court to the date of lodging the FIR and submitted that the FIR was lodged after filing of Matrimonial suit by the son of the petitioners on 30.01.2017 as reflected in the FIR. It has been specifically contended by Learned Advocate for the petitioners that the complainant made complaints before different forum after

initiation of Matrimonial suit and those complaints also do not disclose any specific allegations against the petitioners.

It has been submitted on behalf of the petitioners that the complainant married their son by suppressing the fact that a criminal case is pending against her. Learned advocate has also drawn the attention of the Court to the statements made by the complainant before different forums regarding the alleged incident and submitted that the complainant did not make any specific allegation or aspersion against her parents-in-law either before the NGO, SWAYAM or West Bengal Mahila Commission. Moreover, in her written statement filed in connection with Matrimonial Suit initiated by her husband she has not made any allegation against her parents-in-law. According to the learned advocate for the petitioners even if, all the allegations contained in the FIR are accepted to be true, even then no offence could be made out against the petitioners. It has been specifically argued that there is no justification for continuation of the criminal proceedings against the present petitioners. In support of his contention learned advocate appearing for the petitioners has placed his reliance on several decisions. Learned Advocate for the petitioners has contended that the ingredients of the alleged offences as mentioned in the charge sheet are totally absent so far as the present petitioners are concerned. He has further contended that in matrimonial dispute the general tendency is to involve all the members of the family of the matrimonial home and to make exaggerated allegations in the FIR or complaint. He has submitted that in matrimonial dispute the Court should scrutinize the averments of the FIR with great care and circumspection especially against the relatives of the husband otherwise innocent may be victimized. Allegations of making derogatory remarks and behaving rudely do not come within the purview of Section 498A of the Indian Penal Code.

In support of his submissions Learned Advocate for the petitioners has placed his reliance on the following decisions:-

- 1) Resaual Islam and anr.Vs. State of West Bengal and anr. reported in (2010)2 CCLR (Cal) 121;
- 2) Preeti Gupta And Another Vs. State of Jharkhand And Another reported in (2010) 7 SCC 667;
- 3) Geeta Mehrotra and Another Vs. State of U.P. and another reported in (2013) 1 SCC(Cri) 120;
- 4) Ramesh and ors. Vs. The State of T.N. reported in (2005) 3 SCC 507;
- 5) Rashmi Jain Vs. State of Uttar Pradesh And another reported in (2014) 13 SCC 553;
- 6) Madhavrao Jiwajirao Scindia & Others Vs. Sambhajirao Chandrojirao Angre & Others. reported in (1988) ISCC 692 and
- 7) Vineet Kumar Vs. State of Uttar Pradesh reported in (2017) 13 SCC 369.

On the other hand Learned Additional Public Prosecutor appearing for the State of West Bengal has submitted that the allegations of facts as contained in the FIR clearly constitute prima facie case against the petitioners. In support of his contention, he has drawn the attention of the Court to the treatment sheet of the complainant of Peerless Hospitex Hospital and Research Center Limited, statements made by the complainant before the Chairman, West Bengal Mahila Commission, in the SWAYAM information sheet and submitted that those documents clearly indicate the commission of alleged offences.

Learned Advocate appearing for the opposite party no.2, that is, the complainant has strongly contended that the ingredients making out the prima facie case against the petitioners appear to be existing in the instant case. According to his contention the question of quashing of the proceedings in respect of the parents-in-law does not arise. He has further contended that the grounds to quash the proceedings as raised by the parents-in-law are the subject matter to be heard by the trial court for better appreciation after conducting full trial.

Now, I have to examine whether the facts as contained in the FIR constitute any prima facie case making out the offence against the parents-in-law of the complainant and whether there is at all any material to constitute the offence against the petitioners. Admittedly, charge sheet under Sections 498A/406/506/34 of the Indian Penal Code has been submitted against the petitioner and their son.

From the materials placed on record, as well as from the submissions made by the learned advocates for the parties, it appears that the son of the petitioners and the complainant got acquainted with each other through social media, that is, Facebook. Their marriage was an outcome of their love affairs. They married under the provisions of Special Marriage Act on May 3, 2015. Thereafter on November 18, 2015 their social marriage was solemnized and since then the complainant started living with her husband at her matrimonial home. Admittedly, the complainant left her matrimonial home on February 03, 2016, that means the complainant stayed at her matrimonial home about three months only. From the contents of the FIR it appears that the complainant has specifically averred that her marriage with her husband was never consummated. It has been alleged in her FIR that the husband of the complainant had extra marital affairs and she was abused by her husband whenever she raised that issue and her husband threatened to throw acid on her face. Her husband started beating her for no reason and demanded huge money for the purpose of purchasing of furniture and gold ornaments.

If one goes through the entire FIR as a whole then it will be clear that the names of the petitioners, parents-in-law of the complainant have been mentioned in very cursory manner. No specific allegation has been made against them. Allegations contained in the FIR against them are not free from ambiguity. It suffers from vagueness, so far these petitioners are concerned. The opposite party no.2 has made statements before the different authorities regarding the

alleged incident on different dates. In this connection the learned Additional Public Prosecutor submitted that the torture meted to the opposite party no.2 was of such a nature which compelled her to attempt to commit suicide as reflected in her statement made before the various authorities. In support of his contention, he has drawn the attention of the Court to the treatment sheet of the complainant at Peerless Hospitex and Hospital Private Limited. Plain reading of the FIR leaves no doubt that the complainant made specific allegations against her husband only. On one or two occasions the names of the petitioners were mentioned in the FIR and the said mentioning of their names was in very casual manner and without making any specific allegation against them. Those averments made in the FIR are not free from ambiguity. Moreover, in her statements as collected by the Investigating Officer during investigation before the different authorities the opposite party no.2 did not make any specific allegation against her parents-in-law. Only the parents of the complainant made statement against the petitioners under Section 161 of the Code of Criminal Procedure.

In this connection, it would not be out of place to mention the principles enunciated by our Apex Court in the case of R.P.Kapur Vs. State of Punjab reported in AIR 1960 SC 866. These principles are hereunder:

- i) Where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;
- ii) Where the allegations in the First Information Report or the complaint, taken at their face value and accepted in their entirety, do not constitute the offence alleged;
- iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

Again our Apex Court has laid down certain principles for quashing of the proceedings in the case of State of Haryana & Ors. -Vs.- Ch. Bhajan Lal & Ors. reported in AIR 1992 SC 604. In paragraph 108 of the said judgment the Hon'ble Supreme Court gave illustrations wherein the extraordinary power under Article 226 of the Constitution or the inherent power under Section 482 of the Code of Criminal Procedure can be exercised by the High Court to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

The illustrations are as follows:-

1. 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;
2. Where the allegations in the FIR and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by Police Officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out case against the accused;
4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of a Magistrate as contemplate under Section 155 (2) of the Code;
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can even reach a just conclusion that there is sufficient ground for proceeding against the accused;
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuation of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress, for the grievances of the aggrieved party;
7. Where a criminal proceeding is manifestly accompanied with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Previously I have observed that there is no specific allegation against the petitioners in the First Information Report except mentioning their names in the FIR in casual and cursory manner. Nowhere in the First Information Report it was alleged that there was demand of dowry at the time of marriage by the petitioners. In her First Information Report the complainant stated that several articles were given at the time of her marriage, that is, "stridhan" to her husband. That means as per the contents of the First Information Report the petitioners were not entrusted with the "stridhan" articles of the complainant. From the case diary it appears that "stridhan" articles were seized during investigation. On 1st April, 2018 the complainant took custody of the seized articles on executing zimmanama.

Contents of the FIR reveals that the complainant has specifically alleged that she was tortured by her husband, she was threatened to throw acid on her face by her husband when she raised the question regarding the extra marital affairs of her husband.

The allegations in the FIR, if taken at their face value and accepted in their entirety do not constitute alleged offences under Sections 498A/406/506 of the Indian Penal Code against the present petitioners.

After considering all aspects, I am of the view that it is a fit case to exercise inherent power of the High Court under Section 482 of the Code of Criminal Procedure as continuation of the criminal proceedings against the present petitioners would be an abuse of the process of the Court.

Thus, the proceedings being G.R. Case No. 1063 of 2018 arising out of Baranagar Police Station Case No. 123 of 2018 dated February 24, 2018 under Sections 498A/406/506/34 of the Indian Penal Code pending before the Learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas in respect of the petitioners, namely, Biswajit Singha Roy and Rita Singha Roy, is hereby quashed.

The revisional application being CRR 3472 of 2018 is, therefore, allowed.

Re: CRAN 1152 of 2019

In view of the order passed in connection with revisional application, no further order is required to be passed in respect of the application being (CRAN 1152 of 2019) and the same stands dismissed.

Copy of the case diary be handed over to the Learned Additional Public Prosecutor immediately.

Urgent Photostat certified copy of this judgment be supplied to the parties, if applied for, upon compliance with all formalities.