
(2005) 02 CAL CK 0037
In the Calcutta High Court
Case No : C.R.R. No. 113 of 2004

Jyoti Benod Biswas and Others

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 203, 309, 401, 482
Penal Code, 1860 (IPC) — Section 114, 406, 498A

Citation : (2006) 4 CHN 261

Hon'ble Judges : P.N. Sinha, J

Bench : Single Bench

Advocate : Himanshu De, Suman De and Supratim Dhar, for the Appellant; Tapan Deb Nandy, P.K. Kundu and Sudipa Medda, for the Respondent

Judgement

P.N. Sinha, J.—This revisional application under Sections 401, 482 & 483 of the Code of Criminal Procedure (in short Code), 1973 has been preferred by the petitioners praying for quashing the criminal proceeding being Case No. C-764/01 pending before the learned Judicial Magistrate, 5th Court, Alipore under Sections 498A, 406 & 114 of the Indian Penal Code (in short IPC).

2. The aforesaid case was started on the basis of complaint lodged by opposite party No. 2 as complainant in the Court of learned Chief Judicial Magistrate, South 24-Parganas at Alipore. It was alleged in the complaint that the complainant was married with petitioner No. 1 according to their Hindu rites and customs on 26.11.96. After marriage she was taken to her matrimonial home and on 28.11.96, on the day of "fulsajya" the petitioner No. 1 consumed full bottle of liquor in her presence. Next day, all the petitioners and others hurled insulting comments relating to marriage gifts and the petitioners and others demanded further dowry of Rs. 1,00,000/-and gold jewelleryes of 20 tollas. Sometimes thereafter at the instance of the petitioners a meeting was called for and there the petitioners and others asked her to give an undertaking in writing on non-judicial stamp paper stating therein that nobody would be responsible for

her death and that all the ornaments received by her in the marriage would remain in custody of mother-in-law. Towards end of July in 1997 she was taken to Bhubaneswar, the working place of petitioner No. 1 and, there also, she was subjected to both physical and mental torture by her husband, the petitioner No. 1. On account of "Bhatri Dwitiya" on 2.11.97 she expressed her desire to go to her father's house when the petitioners refused to allow her to go to her father's house. Ultimately, petitioner Nos. 2 and 3 left her near railway station of her father's house and she went to her father's house. At evening on the same day the petitioner No. 2, the father-in-law over telephone told her uncle not to send her to their house. Her father and uncle then sent her back to her matrimonial home but, they were insulted by the petitioners with filthy languages. She was later on again taken to Bhubaneswar, the working place of her husband and in April, 1998 her father-in-law and mother-in-law brought her back to her matrimonial home at Calcutta. In the meantime she became pregnant and even during stage of pregnancy she was not spared from torture and cruelty and on 29.1.99 she gave birth to a female child but, even after birth of child she was subjected to torture. On 12th August, 1999 in spite of her illness while she was cooking, she was assaulted by her father-in-law and when she tried to contact with her father over telephone, the petitioner No. 4 slapped her. Thereafter, her husband took her to a rented flat at Lake Road on 13.10.99 but taking her to the rented flat her husband tortured her in different manners and on 12.12.99 tried to kill her by throttling. On 29.1.2000 after celebrating first birth anniversary of their female child her husband took away her to her parental house and kept her there. In spite of repeated requests her husband and other in-laws did not take back her and demanded the dowry as usual. On 19.2.2000 she along with her parents went to her matrimonial home and demanded back the articles but the accused persons, i.e. the petitioners refused to return the said articles including stridhan properties. On 29.1.01 on the day of Saraswati Puja she was taken to her matrimonial home and after some talks and taking a photograph she was asked to leave matrimonial home and in spite of her and her father's request she was not allowed to stay in matrimonial home. Lastly, on 11.2.01 she went to her matrimonial home at Kalighat with her parents and other relatives and requested them to return the articles given in marriage and her stridhan properties but the accused persons drove them out from her matrimonial home. Thereafter, she lodged the complaint against seven persons in all and, the learned Magistrate after taking cognizance and examining her and other witnesses issued process against the present petitioners. It appears that the petitioners appeared before the Court below and the case is now pending at the stage of evidence before charge. During such stage the petitioners have moved this Court in this revisional application for quashing the criminal proceeding.

3. Mr. Himangshu De, learned Advocate for the petitioners contended that petitioner No. 1 is the husband, petitioner No. 2 is the father-in-law, petitioner No. 3 is the mother-in-law and petitioner No. 4 is the brother-in-law being husband of sister of petitioner No. 1. The opposite party as complainant has filed

the complaint case after receiving summons in matrimonial suit. The learned Magistrate at the time of issuing process did not issue process against all the accused persons arrayed as accused in the petition of complaint. The petitioner No. 2, the father-in-law, is an old person of about 68 years in age and he is suffering from rheumatic arthritis, anaemia, Type-II DM and other ailments. Petitioner No. 3, the mother-in-law is aged about 57 years and is also suffering from various ailments. The complainant left her matrimonial home on 30.1.2000 and thereafter she did not come back to her matrimonial home. In the matrimonial suit there was reconciliation and the complainant returned back to matrimonial home on 14.7.97. Thereafter, the child was born on 29.1.99. Between reconciliation and birth of the daughter there was no allegation of torture against the petitioners. From the petition of complaint and from the statement of witnesses examined u/s 200 of the Code no case has been made out against petitioner Nos. 2, 3 and 4.

4. Mr. De further contended that filing of the complaint u/s 498A of IPC after institution of matrimonial suit by the husband would clearly reveal that there was no element of torture attracting elements of Section 498A of IPC. Presentation of the matrimonial suit by the husband for restitution of conjugal rights would reveal that the opposite party No. 2 complainant tortured her husband. Even assuming though not admitting that, there was some allegation of torture that lies against the husband and not against petitioner Nos. 2 to 4. Petitioner No. 4 being husband of sister of petitioner No. 1 is an outsider and he resides elsewhere and there cannot be any case against him u/s 498A of IPC. The complaint was filed after the husband has instituted a suit for divorce against her. After 29.1.99 there is no allegation of torture against the petitioners. There is no element of Section 498A of IPC against the petitioners and continuation of the criminal proceeding would be an abuse of the process of Court. Accordingly, the criminal proceeding pending against the petitioners should be quashed.

5. Mr. De also contended that the case is pending since 2001 and in spite of several dates for evidence not a single witness has been examined. Long pendency of the case has created mental agony on the petitioners and the petitioners have suffered to a great extent due to long pendency of the case. Accordingly, the criminal proceeding should be quashed by this Court to prevent abuse of the process of Court exercising its jurisdiction u/s 482 of the Code.

6. Mr. Tapan Deb Nandy, learned Advocate for the opposite party contended that the paragraphs 7, 8, 9, 10, 11, 15, 17, 18, 20, 21, 25, 27, 28, 30, 32, 35 and 36 disclose elements of torture demanding dowry on the wife O.P. and these paragraphs disclose sufficient materials against the petitioners. The statement of the witnesses examined u/s 200 also reveals materials against the petitioners and, if no material of offence was disclosed from statement of witnesses examined u/s 200 of the Code, the learned Magistrate would not have issued process. The different annexures filed by the petitioners cannot be looked at all at this stage. From the petition of complaint as well as statement recorded u/s

200 of the Code elements of Section 498A(b) of IPC has been well attracted against all the petitioners. The learned Magistrate after carefully perusing contents of complaint petition and statement of witnesses issued process against the petitioners and against three other accused persons dismissed complaint u/s 203 of the Code. At this stage thereafter there cannot be any ground for quashing the complaint and delay in trial or long pendency of the case is not at all a ground for quashing the criminal proceeding. The order of the learned Magistrate is legal, proper and correct and it requires no interference. As there is no valid ground for quashing the proceeding the revisional application should be quashed. In support of his contention Mr. Nandy cited the decisions namely State of Haryana v. Bhajan Lal reported in 1992 SCC 426, Union of India (UOI) Vs. Prakash P. Hinduja and Another, and Shri Sunil Shantaram Pawar and Shri Indubai Shantaram Pawar Vs. The State of Maharashtra and Smt. Vijaya Sunil Pawar,

7. After carefully perusing the revisional application, materials on record and considering the submissions made by the learned Advocates of the parties, I am unable to accept the contentions of Mr. De, learned Advocate for the petitioners. It is not true that between reconciliation and birth of the child there was no torture and allegation of torture, if any, was against the husband and not against other petitioners. It is also not acceptable that there is omnibus allegations against the others. From the petition of complaint it appears that between reconciliation and birth of the child on 29.1.99 there was allegation of torture not only against the husband but also against others. From the complaint it appears that after birth of the child the opposite party complainant was subjected to torture by these petitioners. The petition of complaint and the statements recorded u/s 200 Cr.P.C. disclose elements of torture demanding dowry and physical and mental torture on the complainant not only by the husband but also by father-in-law, mother-in-law and Gour Dutta, who are the petitioners in this matter. The statements recorded u/s 200 Cr.P.C. and petition of complaint reveal elements against the petitioners which cannot be regarded as omnibus allegations. There are specific materials against them and the learned Magistrate rightly issued process against the petitioner and dismissed the complaint against others as against other materials were not sufficient.

8. The Hon'ble Supreme Court in several decisions including State of Haryana v. Bhajan Lal (supra), M. Narayandas v. State of Karnataka reported in 2004 SCC 118, State of AP. v. Golconda Linga Swami and Anr. reported in 2004 SCC 1805, has clearly observed that power to quash a proceeding u/s 482 of the Code does not arise where the allegations made in the First Information Report or the complaint if taken at their face value and accepted in their entirety prima facie constitutes offence or makes out case against the accused. There cannot be invoking of the power under this section where the uncontroverted allegations made in the FIR or complaint and evidence collected in support of the same disclose commission of any offence and makes out case against the accused. In the present case the allegations made in the complaint cannot be regarded as

absurd or inherently improbable. The dictum of the highest Court of India is that power to quash a proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. At the initial stage the Court cannot enquire about reliability or genuineness or otherwise of the allegations made in the FIR or complaint. Court has also no power to enquire whether the allegations are likely to be established or not. A plain reading of the petition of complaint and statement of the complainant and her witnesses recorded u/s 200 of the Code clearly disclose elements of offence against these petitioners. In the instant case, therefore, complaint is not liable to be quashed in exercise of inherent jurisdiction u/s 482 of the Code.

9. Long pendency of cases is itself not a ground for quashing. The complaint was filed in 2001 and the present petitioners have appeared before the learned Magistrate. The case is pending at the stage of evidence before charge and during such stage the petitioners moved this Court in this revisional application. There was no such abnormal delay causing mental agony and hardship to the petitioners sufficient to justify intervention of this Court. It appears to me that only 3 or 4 dates have passed for evidence and trial and recording of evidence could not be started. Considering nature of the case I think that the learned Magistrate may be directed to expedite the hearing of the case and not to allow undue adjournment to either of the parties. In *State of Rajasthan v. Iqbal Hussain* reported in AIR 2004 SCW 5196, it has been held by the Supreme Court that delay in holding trial cannot be ground to close evidence and direct acquittal of accused. It was also observed that possibility of prejudice is not enough. Actual prejudice has to be proved. No finding of prejudice is possible without full knowledge of facts. The Supreme Court directed expeditious hearing and follow of Section 309 of Cr.PC.

10. In view of the discussion made above there is no ground at all to quash the impugned proceeding pending before the learned Judicial Magistrate, 5th Court, Alipore. The revisional application having no merit fails and is dismissed. I make it clear here that I have not entered into merits of the case and the learned Magistrate in the trial shall form his opinion on the basis of evidence and materials on record and should not be influenced in any way by the observations of this Court which observations have been made only for the purpose of this revisional application.

11. Learned Judicial Magistrate is directed to dispose of the case as expeditiously as possible and preferably within one year from the date of communication of the order without granting undue adjournment to either of the parties.

12. Send a copy of this order to the learned Judicial Magistrate, 5th Court, Alipore for information and necessary action.

13. Urgent xerox certified copy be given to the parties, if applied for, expeditiously.