
(2014) 11 CAL CK 0122
In the Calcutta High Court
Case No : C.R.R. 3814 of 2013

Kalyan Kumar Paul

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 161, 167(5), 468
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 120B, 34, 406, 494, 498A

Citation : (2014) 11 CAL CK 0122

Hon'ble Judges : Joymalya Bagchi, J

Bench : Single Bench

Advocate : Sayanti Santra, Advocate for the Appellant; Rituparna Ghose (De), Advocate for the Respondent

Judgement

Joymalya Bagchi, J.—Proceeding in G.R. Case No. 1125/09 arising out of Khardah Police Station Case No. 81 dated 17.2.09 under sections 498A/ 34 of the Indian Penal Code including the order dated 6.8.2013 passed therein, has been challenged in this revision petition.

2. The prosecution case as made out in the First Information Report is to the effect that the opposite party was married to the petitioner on 7.1.2000 under the Special Marriage Act. Soon after the marriage the petitioner and other accused persons started subjecting her to mental and physical torture on demands of further dowry. On 18.1.2002 the opposite party No. 2 was forced to leave her matrimonial home and since then she is living her parental house.

3. Over the aforesaid incident, in 2009 the opposite party No. 2 took out an application under section 156(3) of the Code of Criminal Procedure before the court of the learned Additional Chief Judicial Magistrate, Barrackpore, North 24-Parganas. Pursuant to the direction of the learned Magistrate Kharda Police Station Case No. 81 dated 17.2.2009 under sections 498A/ 406/ 120B/ 34/ 506(II) of the Indian Penal and under sections 3/ 4 of the Dowry Prohibition Act

was registered for investigation against the petitioner and two other accused persons. In conclusion of investigation, charge sheet was filed under sections 498A/ 34 of the Indian Penal Code against the petitioner and two other accused persons. It is pertinent to note that one of the accused person, namely the mother-in-law of the opposite party No. 2 has expired in the meantime. Prayer for discharge of the petitioner under section 167(5) Cr.P.C. was turned down by the trial Court by the impugned order dated 06.08.2013.

4. Ms. Santra, learned counsel appearing for the petitioner submitted that the impugned proceeding is an abuse of the process of Court. Admittedly the parties are living separately from 2002 and after expiry of more than seven years the impugned criminal proceeding has been started. There is no iota of explanation as to why the impugned criminal proceeding was instituted after an inordinate delay of seven years. It is further submitted that the allegations are general and omnibus in nature and do not constitute 'cruelty' as defined in section 498A of the Indian Penal Code.

5. In spite of service of notice nobody appears for the opposite party No. 2. Report filed on behalf of the Investigating Agency is also kept on record.

6. Mrs. Ghose, learned counsel appearing on behalf of the State submitted that the allegations prima facie disclose ingredients of offence under section 498A of the Indian Penal Code. She however contended that further statement of the opposite party No. 2 recorded in the course of investigation shows some explanation given by her as to why the impugned criminal proceeding was instituted belatedly. She, accordingly, prayed for dismissal of the petition.

7. I have considered the rival submissions of the parties including the materials on record. It is fact that the parties are residing separately on and from 2002. The instant criminal proceeding has been instituted after a lapse of seven years in 2009. However, inordinate and protracted delay in institution of the proceeding prompts an inference of mala fides until and unless some cogent reason for such delay is forthcoming. I have gone through the statement of the witnesses recorded in the course of investigation under section 161 of the Code of Criminal Procedure. I find that the opposite party No. 2 in the course of her further statement stated she had approached the petitioner for divorce in 2005. As the petitioner had refused to give divorce she instituted the criminal case. Patent malice on the part of the opposite party No. 2 in instituting the belated criminal proceeding in order to exert pressure upon the petitioner and compel him to grant divorce to the opposite party No. 2 is, therefore, evident as transpiring from the aforesaid statement of the de facto complainant recorded in the course of investigation.

8. In State of Haryana and others Vs. Ch. Bhajan Lal and others, the Apex Court, inter alia, held that where a criminal proceeding is manifestly attended 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 the same is liable to be quashed.

9. Relying on the aforesaid authority, the Apex Court is quashed a belated prosecution under section 498A of the Indian Penal Code by a divorced lady in Sundar Babu and Others Vs. State of Tamil Nadu, .

10. Similarly in M. Saravana Porselvi Vs. A.R. Chandrashekar @ Parthiban and Others, the Apex Court quashed a proceeding under section 498A/ 494 of the Indian Penal Code lodged a decade after the couple was residing separately and having agreed to a customary divorce. The Court opined:-

"The customary divorce may be legal or illegal. The fact that such an agreement had been entered into or the appellant had received a sum of Rs. 25,000/- by way of permanent alimony, however, stands admitted. The document is a registered one. The appellant being in the legal profession must be held to be aware of the legal implication thereof. If the contents of the said agreement are taken to be correct, indisputably the parties had been living separately for more than ten years. How then a case under Section 498-A of the Penal Code can be said to have been made out and that too at such a distant point of time is the question, particularly in view of the bar of limitation as contained in Section 468 of the Code of Criminal Procedure. Even otherwise it is unbelievable that the appellant was really harassed by her husband or her in-laws."

11. The facts as revealed in the course of investigation in the instant case portray a glaring example of abuse of process of law in instituting a belated prosecution as a lever to browbeat the husband to give divorce to the petitioner.

12. I am, therefore, inclined in quashing the impugned criminal proceeding which is actuated with malice and has been instituted as instrument of harassment and coercion of the petitioner to compel him to grant divorce to the opposite party No. 2-wife.

13. Accordingly, the impugned proceeding being G.R. Case No. 1125/09 pending before the learned Additional Chief Judicial Magistrate, Barrackpore, North 24-Parganas is quashed. The revision petition is allowed. The case diary be returned.

14. Let the lower court records along with a copy of the judgment be sent down to the learned court below at once.

15. Urgent photostat certified copy of this order, if applied for, be furnished on priority basis.