

(2023) 09 CAL CK 0098
In the Calcutta High Court
Case No : Criminal Revision No. 2347 Of 2011

Layla Begum @ Runa Begum & Ors.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 26-09-2023

Acts Referred:

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

Citation : (2023) 09 CAL CK 0098

Hon'ble Judges : Ananya Bandyopadhyay, J

Bench : Single Bench

Advocate : Kallol Mondal, Binay Panda, Puspita Saha

Final Decision : Disposed Of

Judgement

Ananya Bandyopadhyay, J

1. The instant revisional application is filed by petitioners for quashing of the proceedings being G.R. Case No. 414 of 2011 arising out of Khanakul Police Station Case No. 54 of 2011 dated 03.04.2011 registered for investigation into offences punishable under Sections 498A/406 of the Indian Penal Code, pending before the Learned Additional Chief Judicial Magistrate, Arambagh, Hooghly.

2. The Learned Advocate for the petitioners submitted as follows:-

(a) Petitioner No. 1 is the Sister-in-law of the opposite party no. 2 and she is aged about 26 years; the petitioner no. 2 is the mother-in-law of the opposite party no. 2 and she is aged about 55 years. The petitioner no. 3 is the father-in-law of the opposite party no. 2 and he is aged about 70 years and suffering from various old age ailments; the petition no. 4 is the brother-in-law of the opposite party no. 2 and he is aged about 26 years; the petitioner no. 5 is the husband of the opposite party no. 2, is aged about 40 years and he is a tailor by occupation; the petitioner no. 6 is the unmarried sister-in-law of the opposite party no. 2 and

she is aged about 20 years; the petitioner no. 7 is the uncle-in-law of the opposite party no. 2 and he is aged about 65 years; the petitioner no. 8, 9, 10 and 11 are brothers-in-law and aged about 28, 20, 24 and 35 years respectively; the petitioner no. 12 is the aunt-in-law of the opposite party no. 2 and she is aged about 55 years and the petitioner no. 13 is the sister-in-law of the opposite party no. 2 and she is aged about 23 years and she reside in a separate place and she is in no way connected with the day to day affairs of the matrimonial life of the opposite party no. 2. The petitioner's no. 4, 8 and 11 are cultivators by occupation and the petitioner's no. 1, 2, 6, 12 and 13 are house-wives.

(b) On 20.04.1997 the son of the petitioner nos. 2 and 3 being petitioner no. 5 was married to the opposite party no. 2 as per the Muslim Rites and Customs. After the said marriage three male children were born out of the said wedlock namely Sk. Afridi Salim, Sk. Ibrahim Salim and Sk. Salman Salim. Subsequently the petitioner no. 5 came to know that his wife being the opposite party no. 2 herein is having an illicit relationship with one Sabir Ali @ Sk. Sabirul Islam of his native village. After getting informed of such relation the petitioner no. 5 took the opposite party no. 2 along with his three children to Kolkata wherein he was working for gain. Even after that the opposite party no. 2 was continuing to be in that illicit relationship.

(c) Thereafter on 19.12.2010 the opposite party no. 2 had eloped with the said Sabir Ali @ Sk. Sabirul Islam. Unable to bear such disgraceful act of the opposite party no. 2, the petitioner no. 5 had pronounced "Talaq" as per the requirements of Mohammadan Law on 2nd February, 2011. The said pronouncement of "Talaq" was communicated to the opposite party no. 2 by way of Speed Post on 07.02.2011 and on the same day the said communication was also made to the Inspector-in-Charge of Khanakul Police Station by the petitioner no. 5.

(d) Petitioner no. 5 had also filed a complaint before the Learned Chief Metropolitan Magistrate at Kolkata stating the aforementioned fact.

(e) On 19.12.2010 a G.D. Entry being no. 1797 of 2010 dated 19.12.2010 was also lodged by the brother of the opposite party no. 2, namely one Mominuddin inter alia stating that his sister being the opposite party no. 2 herein was missing on that day. After enquiring with regard to her whereabouts, he came to know that his sister had an illicit relationship with one Sabir Ali @ Sk. Sabirul Islam and saw her with the said person. When the opposite party no. 2 was asked to come back she refused and the said brother was severely assaulted by the father of the said Sabir Ali @ Sk. Sabirul Islam. Thereafter the father of the said Sabir Ali @ Sk. Sabirul Islam came to know of such unlawful act of his son and made a declaration on 20.12.2010 whereby he had abandoned his son. Further on 26th December, 2010 a general meeting was held in the village wherein it was inter alia decided that the said Sabir Ali @ Sk. Sabirul Islam had unlawfully enticed the legally married wife of the petitioner no. 5 resulting in dissolution of their conjugal life and as such he shall not be allowed to enter into the locality and no one shall keep any relation with the said Sabir Ali @ Sk. Sabirul Islam.

(f) Angered by such act of the petitioner no. 5 the opposite party no. 2 filed the instant concocted complaint before the Learned Additional Chief Judicial Magistrate, Arambagh, Hooghly. Subsequently on the basis of a direction issued by the Learned Additional Chief Judicial Magistrate, Arambagh, Hooghly pursuant to the said complaint filed by the opposite party no. 2 the instant police case has been registered against the petitioners being Khanakul Police Station Case No. 54 of 2011 dated 03.04.2011 for investigating into offences under Section 498A/406 of the Indian Penal Code and prayed for quashing of the same.

3. The Learned Advocate for the petitioners further submitted that few days after filing of the complaint and before the institution of the Police Case the opposite party no. 2 has married the said Sk. Sabir Ali @ Sk. Sabirul Islam on 15.03.2011 as per Muslim Rites and Customs and since then she had been residing with the said Sabir Ali @ Sk. Sabirul Islam at Presently Residing at 18/A Alimuddin Street, Park Circus, Kolkata – 700016.

4. The Learned Advocate for the State submitted the case diary reveals sufficient incriminating materials to be adjudicated through trial.

5. The allegations enumerated in the complaint inter alia stated the opposite party no. 2 was married to the petitioner no. 5 as per Muslim Rites and Customs fourteen (14) years ago. At the time of the said marriage cash Rs. 50,000/-, Gold Ornaments and other house-hold articles were given as dowry by the father of the opposite party no. 2. Subsequent to the said marriage three male children were born out of the said wedlock. After the birth of the said children as the daily expenses of the family increased, the opposite party no. 2 was tortured by her husband and her other-in-laws demanding a sum of Rs. 50,000/- and a Colour Television; as the opposite party no. 2 declined that it was not possible for her father to fulfill such demand, the said tortured intensified and she was instigated to commit suicide by the petitioners. Thereafter a portion of their demand was fulfilled by payment of Rs. 20,000/- and a Colour Television. Thereafter nearly two months ago from the date of filing of the First Information Report due to non fulfillment of the demand of Rs. 30,000/- the opposite party no. 2 was driven out from her matrimonial home. Subsequently the opposite party no. 2 went to her matrimonial home along with some well-wishers on 05.02.2011 for the purpose of reconciliation but she was assaulted by her husband and the petitioners. Thereafter again on 10.02.2011 she went to her matrimonial house to lead her conjugal life but she had been told by the petitioners that unless she fulfills their demand she will not be allowed to reside in her matrimonial house.

6. The marriage between the opposite party no. 2 wife and the petitioner no. 5 husband subsisted for a period of fourteen years. The couple gave birth to three children who admittedly resided with their father i.e. petitioner no. 5. The opposite party no. 2 did not reveal one instance of torture and demand for dowry prior to the instant complaint. The allegations against the petitioners after fourteen years of marriage are general and omnibus in nature. The offences alleged under Section 498A and Section 406 of the Indian Penal

Code at the backdrop of her isolation from the husband and his family members cannot be established and/or sustained. The G.D. entry being no. 1797 of 2010 dated 19.12.2010 lodged by the brother of the opposite party no. 2 narrates an incident contrary to the contentions in the complaint lodged by the opposite party no. 2 wife. The complaint lodged by the opposite party no. 2, if taken cognizance of, will result into a process of abuse of law, which has been filed out of grudge and the allegations denote improbabilities.

7. In the case of *State of Haryana and Others v. Bhajan Lal and Others* 1992 Supp (1) SCC 335 the Hon'ble Supreme Court has held as follows :

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report 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 first information report 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 a 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 contemplated 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 ever 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 continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) 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.”

8. In view of the above discussions, G.R. Case No. 414 of 2011, under Sections 498A/406 of the Indian Penal Code, pending before the Learned Additional Chief Judicial Magistrate, Arambagh, Hooghly, arising out of Khanakul Police Station Case No. 54 of 2011 dated 03.04.2011 is quashed.

9. The Criminal revisional application being No. CRR 2347 of 2011 is allowed.

10. Accordingly, CRR 2347 of 2011 stands disposed of, Connected application, if there be any, also stands disposed of.

11. There is no order as to cost.

12. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.

13. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.