
(2010) 02 CAL CK 0109
In the Calcutta High Court
Case No : C.R.R. No. 4636 of 2009

Naran Singh Sardar @ Palash Singh Sardar	APPELLANT
Vs	
The State of West Bengal and Another	RESPONDENT

Date of Decision : 22-02-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 323, 34, 406, 498A

Citation : (2010) 02 CAL CK 0109

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Ashoke Banerjee and Subodh Banerjee, for the Appellant; Krishna Ghosh, for the Respondent

Judgement

Ashim Kumar Roy, J.—The petitioner has sought for quashing of the charge-sheet relating to offences punishable under Sections 498A/406/323/34 of the Indian Penal Code on the following grounds;

(a) The petitioner who is an Army Personnel and was posted at Jammu & Kashmir at the material point of time was at Army Campus and was not present at the village Bhikari Cheliama, Purulia.

(b) According to the complainant the marriage was solemnized on October 12, 2005 at Barabazar, Purulia, but on that day he was at his place of employment at Jammu & Kashmir.

(c) A long delay in lodging the FIR.

(d) Petitioner's application for anticipatory bail has been allowed by this Court.

(e) According to the police report during investigation no evidence was found to establish the marriage between the petitioner and the defacto-complainant.

2. The learned advocate appearing on behalf of the petitioner in his oral submission also reiterated the aforesaid points in support of the prayer for quashing. While the learned advocate for the State produced the Case Diary and

submitted that sufficient materials have been collected by the police justifying submission of the charge-sheet.

3. I have given my anxious and thoughtful consideration to the rival submissions of the parties. Considered the materials on record, more particularly, the Case Diary containing the evidentiary materials on the strength of which charge-sheet has been submitted.

This Court has been moved for quashing of the charge-sheet, as such the question is to see whether on the evidentiary materials collected by the police during investigation the charge-sheeted offence has been made out or not. At this stage there is no scope to go into the truth or falsehood of those allegations and then to decide which version of the case is true whether that is the version of the prosecution or that of the defence. Those are the matters of trial.

4. So far as the contention of the petitioner that on the date of the alleged marriage and at the time of the alleged incident he was present at his place of employment at Jammu & Kashmir is essentially a plea of alibi and cannot be taken up to consider without the trial. Similarly, the delay in lodging the FIR is a question of fact and same cannot also be gone into at this stage. The petitioner has been granted anticipatory bail by this Court is no ground for quashing of the charge-sheet. Now, the only question left for decision whether on the evidentiary materials collected by the police commission of the charge-sheeted offence has been disclosed or not. I find from the perusal of the Case Diary quite a large number of witnesses were examined during the investigation of the case including the defacto-complainant. According to the defactocomplainant she had a love affairs with the present petitioner, who was her co- villager. On October 12, 2007 the petitioner married her in a Shiva Temple situated in their village by putting vermilion on her head at the time of the marriage no priest was present. They took several photographs together but the same were not traceable. After marriage she was taken to the house of the petitioner and soon thereafter the relations of her husband, viz., her brothers, sister-in-laws and others started asking the defacto-complainant to bring money from her parents and on her failure to fulfill their demand they started torturing her both physically and mentally. According to their co-villagers Kalipada Garai, Takurdas Hembram, Haru Sardar that they knew about the love affairs between the defacto-complainant and the petitioner but neither they had any knowledge nor heard anything about their marriage. They had no knowledge as to whether the defacto-complainant Latika resided at the house of the petitioner and the petitioner Naran is a married man having his children. The witness Haru Sardar categorically stated that he was residing at the adjacent house of the petitioner but he never saw the defacto-complainant Latika there. The father of the defacto-complainant Lakhiram Beshra as well as her brother Naren Beshra were also examined by the police during investigation. According to the said witnesses that the petitioner before he got his job in Military used to come to their house regularly, but thereafter never came. They heard from the defacto-complainant

that the petitioner married her at a local Shiva Temple by putting vermilion on her head. It was known to the villagers that they had a love affairs between themselves.

5. Thus, from the statement of the witnesses recorded during investigation the only thing I find that all of them heard about the marriage between the petitioner and the defacto-complainant held at a Shiva Temple of the village from the defacto-complainant. The said witnesses including the father and brother of the defacto-complainant had no direct knowledge about their marriage. Although the villagers admitted that they had no knowledge that the petitioner and the defacto-complainant were residing together at the petitioner's house but the father and brother of the defacto-complainant made no such allegations. I further find that no witnesses including the villagers as well as the father and brother of the defacto-complainant made any allegation against the petitioner for torturing the defacto-complainant on demand of dowry.

6. In the case of *Reema Aggarwal v. Anupam and Ors.* reported in 2004 SCC (Cri) 699, the Apex Court held that it would be appropriate to construe the expression "husband" to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions of Sections 304B and 498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B of the Indian Penal Code. It was further held the absence of definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as "husband" is no ground to exclude them from the purview of Section 304B or 498A of the Indian Penal Code. However, in this case I do not find any material to the effect that the petitioner and the defactocomplainant ever maintained any marital relationship between themselves and they were living as husband and wife although there was some allegations of marriage at a temple by putting vermilion on the head of defacto-complainant, but without any independent corroboration. None of the witnesses even the father and the brother of the defacto-complainant had ever claimed that both the petitioner and the defacto-complainant were staying together for any time as husband and wife. Even the witnesses who were residing at the adjacent house of the petitioner categorically stated that they never find the defacto-complainant to stay at the house of the petitioner. Since, there was no material to show that there was any marriage between the petitioner and the defacto-complainant and any marital relationship between them and they live together as husband and wife at the house of the petitioner at any point of time, there cannot be any question of subjecting her to cruelty as a housewife on a demand of dowry.

Thus, it would be the inevitable conclusion that on the evidentiary materials collected by the police during investigation, as above the submission of the

impugned charge-sheet is not at all justified. In the result, this criminal revision stands allowed and the charge-sheet stands quashed.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.