

(2023) 01 CAL CK 0018
In the Calcutta High Court

Case No : Criminal Revision No. 3681 Of 2015, 1770 Of 2018

Neha Kumari & Ors.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 06-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 156(3), 482
Indian Penal Code, 1860 — Section 31, 120B, 147, 323, 379, 406, 415, 420, 427, 498A, 504, 506
Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2023) 01 CAL CK 0018

Hon'ble Judges : Subhendu Samanta, J

Bench : Single Bench

Advocate : Hiron Lal Majumdar, Madhuja Riwika, Payel Roy Mishra, Imran Ali, Debjani Sahu, Amajit De, Shakshi Rathi

Final Decision : Disposed Of

Judgement

Subhendu Samanta, J

Both the criminal revisional applications were filed by Neha, a married lady along with her parents and brother for quashing of two criminal proceedings filed by the in-laws.

CRR 1770 of 2018 was filed for quashing of proceeding being GR Case No. 1938 of 2017 arising out of Coke Oven P.S Case No. 148 of 2017 u/s 406,420,120B, 506 of IPC. Now pending before the Learned Additional Chief Judicial Magistrate, Durgapur, initiated by brother-in-law of Neha.

CRR 3681 of 2015 was filed for quashing of CR No. 507 of 2014 initiated by mother-in-law of Neha on 14.12.2014 pending before JM, 3rd Court Durgapur u/s- 147,323,379,427,504,506 and 31 IPC.

The brief fact of the case is that the marriage between Neha Kumari and Rakesh

Prasad Gupta was solemnised on 14.02.2014 according to Hindu Rights and Customs. After married the matrimonial disputes between the parties were cropped up.

Neha Kumari lodged at Women P.S. Chaibasa vide FIR No. 6 of 2014 dated 22.10.2014 u/s 498A and 314 of Dowry Prohibition Act. Investigation police ended in charge sheet vide charge sheet No. 55/2015 dated 20.05.2015 u/s 498A of IPC against husband, mother-in-law, father-in-law and brother-in-law.

Shila Debi Gupta lodged the complaint case vide CR No. 507 of 2014 on 04.12.2014 before ACJM, Durgapur against the wife, her parents and brother alleging for an offence punishable u/s 147,323,379,427,504,506 and 34 IPC. Complainant was examined in SA and processes were issued against the accused persons. After receiving the process the accused persons did not turn up thus, the WA was issued.

The brother-in-law also filed a petition of complaint against the Neha and her father and brother before the Learned ACJM Durgapur on 22.09.2017 alleging inter alia the offences against the accused persons committed u/s 406,420,120B, 506 IPC. On receiving the complaint the Magistrate directed the O.C Coak Oven P.S to investigate the same treating the petition of complaint as FIR u/s 156(3) Cr.P.C. Police registered Coak Oven P.S case No. 148 of 2017 dated 03.11.2017 u/s 406,420,120B and 406 IPC. After completion investigation police submitted charge sheet against all the accused persons vide CS No. 138 of 2017 dated 31.12.2017.

The Neha along with her parents and brother are before this court for quashing both the criminal proceeding.

Learned Advocate for the petitioner submitted before this court that the allegations made in the complaint are so absurd and inherently improbable that on the basis of which no prudent person can ever reached just conclusion that there is sufficient ground for proceeding. The facts in the complaints are vague and indefinite. He further pointed out that after marriage inhuman torture was perpetrated upon Neha by her husband and in-laws at her matrimonial home, consequently the Neha lodged a complaint before the Chaibasa Women P.S against her husband and in-laws u/s 498A IPC; after completion of investigation the police submitted charge sheet in that case. Out of sheer vengeance and as a counter- blast the mother-in-law lodged the complaint against the petitioners u/s 323,379 IPC. The husband and in-laws of Neha, to harass further, again lodged another petition of complaint before the ACJM, Durgapur in which the Coak Oven P.S case No. 148 of 2017 dated 03.11.2017 was registered. Learned Advocate for the petitioner submitted that on the same set of facts to different members of the same family having same objective being initiated two proceedings against the same set of accused persons. This is the instance of abuse of the powers of the court. He further submitted in both the cases the present petitioners are falsely implicated and harassed a lot.

Learned Advocate for the petitioner further submitted that from the plain reading of the two petitions of complaint it would be revealed that they are self contradictory and purposive. The facts stated in the petition of complaint are so absurd that if any one can be believed the other must be disbelieved. He again argued that the criminal proceedings are initiated only to harass the married lady and her parents. He again argued that if both the criminal proceedings are allowed to be continue, the process of the court would be highly abused. So he prayed for quashing of both the criminal revisions. In support of his contention he cited a decision passed by Hon'ble Supreme Court in Rajiv Thapar & Ors. Vs. Madanlal Kapur in Criminal Appeal No. 174 of 2013 decided on 23.01.2013.

Learned Advocate for the private opposite party No. 2 submitted before this court that the petitioners are the wrong dowers who committed the offence as mentioned in the petition of complaint itself. After marriage the disputed were cropped only because of the married lady. She filed a false case before the Chaibasa Women P.S. By the direction of the investigating officers of the Chaibasa Women P.S, the present O.P.S. along with the husband of the married lady were appeared before the Police Station. The I.O. of the said case after considering the facts of matrimonial disputes tried to reconcile the matters several times but it was not materialised due to the indifferent attitude of the married lady. He further pointed out that police has submitted charge sheet on GR Case No. 1938 of 2017 against all the petitioners. Sufficient materials are collected by the police during the course of investigation. At this juncture the evidences cannot be disbelieved. He further argued that in CR No. 507 of 2014 the petitioners never appeared before the Learned Magistrate after receiving the process. Thus the warrant of arrest was issued. The petitioner filed the instant criminal revision only to avoid the process of law. He prayed for rejection of criminal revision.

Learned Advocate for the state submitted that there are sufficient materials before the Magistrate to proceed the matter. This is a very initial stage of the criminal proceeding; at this juncture the cases cannot be quashed. He placed the CD.

Heard, the Learned Advocate perused the case records. Perused the CD.

On through perusal and the complaint filed by the brother-in-law of Neha (GR Case No. 1938 of 2017) it appears to me that one joint savings account was opened at Central Bank of India, Hattala Road, Durgapur Bazar, P.S Coak Oven by Neha and her husband with a purpose that the valuable ornaments would be placed in the safe custody of the locker of the joint account. Accordingly, they opened locker at the said bank in the name of Neha. On 02.09.2014. They put several ornaments and jewelleryes of both Neha and her husband to the said locker. It was further alleged on 17.03.2015 Neha came to her matrimonial home with a plea that she would took back some gold ornaments to attend a marriage ceremony. By such she took all the ornaments from the locker. Several requests were made on behalf of the in-laws to return gold and silver ornaments, but

Neha did not return the same. Thus, the complaint was lodged.

In the other petition of complaint initiated by the mother-in-law of the Neha it reveals that it also stated the date of 02.09.2014 regarding opening of one joint account and the locker. It also mentioned the execution of agreement between the parties before the Learned Advocate of Durgapur Court on that date. The complaint alleged that on the same day at about 02.30 pm. The petitioners along with some anti-social persons assaulted the mother-in-law Neha and snatch some gold chain and taken away some money from the almirah. The complaint also stated another incident dated 02.11.2014 regarding the another assault inflicted by the petitioners upon mother-in-law of Neha.

The complaint case (CR No. 507 of 2014) was filed on 04.12.2014 the GR Case was filed on 22.09.2017. The GR case does not reflect the case of assault of CR Case No. 507 of 2014. I also perused one complaint lodged by the father-in-law of Neha on 31.10.2014 to SP Chakradharpur regarding the same set of facts but it also does not disclose the case of assault.

The chronology of the facts goes to show that on 02.09.2014 there was an agreement between the Neha and her husband-- they opened a joint account-- they opened a locker-- they placed gold and silver ornaments at the said locker-- on the same day at about 02.30 pm. Neha and her parents assaulted the mother-in-law of the Neha-- On the next day i.e. on 03.09.2014 Neha and her husband started for Chakradharpur to Chaibasa Women Police Station for counselling-- but there are quarrel at Chakradharpur Railway Station between Neha and her husband-- Consequently the father lodged the complaint to SP Chakradharpur.

The facts as stated in the entire episode and the facts as stated in CR Case No. 507 of 2014 appears to me highly improbable.

In considering the investigation of the police in GR Case No. 1938 which was ended in charge sheet against the present petitioners U/s 420/120B, 506 IPC, it appears that during the course of investigation police has recorded the statement available witnesses who are brother- in-law and the complainant herself. During the course of investigation Neha and her father also appeared and gave their statement that the locker contain only the Stridhan ornaments of Neha. Report was also received from the manager of the concerned bank containing inter alia that the locker was operated by Neha and it was found empty.

I have perusing the judgment of Hon'ble Supreme Court passed in Rajiv Thapar's Case para- 23 of the said judgment read as follows-

23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable

quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.

The principle of quashing FIR has been specifically formulated by the Hon'ble Supreme Court in Ch. Bhajanlal's case para-91, 107, and 108 of Bhajanlal's case is read as follows-

91. Gajendragadkar, J. Speaking for the Court while considering the inherent powers of the High Court in quashing the First Information Report under Section 561-A of the old Code (corresponding to Section 482 of the new Code) in R.B. Kapur v. The State of Punjab (cited above (1960) 3 SCR 338: (AIR 1960 SC 866 at p. 869) at page 393 made the following observation :

" Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First information Report to decide whether the offence alleged is disclosed or not. In such cases, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accuse person."

107. Mr. Parasaran, according to whom the allegations in the present case do not make out an offence, drew our attention to a recent judgment of this Court in State of U.P. vs. V.R.K. Srivastava (1989) 4 SCC 59 : (AIR 1989 SC 2222) to which one of us (S. Ratnavel Pandian, J.) was party. In that case, it has been ruled that if the allegations made in the FIR, taken on the face value and accepted in their entirety, do not constitute an offence, the criminal proceedings instituted on the basis of such FIR should be quashed. The principle laid down in

this case does not depart from the proposition of law consistently propounded in a line of decisions of this Court and on the other hand it reiterates the principle that the court can exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the FIR, do not constitute an offence and that it depends upon the facts and circumstances of each particular case.

108. 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 or 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 F.I.R. 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 F.I.R 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 F.I.R 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.

Let me consider whether the allegations made in the FIR of GR Case No. 1938 of 2017 after taken it to be accepted in entirety, is it possible to constitute of offence or to prove guilt against the petitioners? The cheating has been defined u/s 415 of the IPC read as follows-

Cheating – “whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person ought to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything but he would not do or omit if he were not so deceived, and which act or omission of cases or likely to cause damage or harm to them person in body mind reputation or property, is such to ‘cheat’”.

This section has two parts. While the first part the person must dishonestly or fraudulently induced the complainant to deliver the property; in the second part the person should intentionally induced the complainant to do or omit to do a thing. A guilty intention is an essential ingredient of the offence of cheating.

In the present case it was alleged that the ornaments were kept in the locker in joint account in the name of Neha and her husband. It is a vague and indefinite in this case regarding the quantity and particulars of the ornaments and it is also indefinite in this case which ornaments are the stridhan properties of Neha and which are the personal property of her husband. The investigation of the police also silent in that respect. Considering the entire circumstances if the facts of the complaint is considered to be true entirely the offence, as alleged cannot be established in trial against the accused persons. The Hon’ble Supreme Court in Bhajanlal’s case has formulated the principles which appear to me very much applicable in this case. The criminal proceeding initiated against the Neha and her parents and brother is manifestly attended with mala fide intention and they are maliciously instituted with an ulterior motive for wreaking vengeance on the petitioners with a view to spite them due to grudge for filing FIR against them u/s 498A IPC.

Considering the facts and circumstances and materials on record I am of a view that the continuation of the criminal proceeding against the present petitioner would be an abuse of process of court. This is a fit case where this court can invoke its inherent power u/s 482 of the Criminal Procedure Code to quash the malicious criminal proceeding against the present petitioner.

In result thereof I find there are merits to entertain criminal revision applications and they are liable to be allowed.

In conclusion criminal revisional applications are allowed.

The criminal proceeding pending against the present petitioner being GR Case No. 1938 of 2017 arising out of Coak Oven P.S Case No. 148 of 2017 u/s

406/420/120B/506 IPC, now pending before the Learned ACJM Durgapur; and the criminal proceeding of CR Case No. 507 of 2014 corresponding to TR Case No. 116 of 2014 u/s 323/379 of IPC pending before the Learned Judicial Magistrate 3rd Court at Durgapur are hereby quashed.

CRRs are disposed of.

Connected pending CRAN applications if any, are also disposed of.

Any order of stay passed by this court during the continuation of the instant criminal revision is also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.