

(2009) 07 CAL CK 0044
In the Calcutta High Court
Case No : C.R.R. No. 1414 of 2009

Pranab Kanti Sen and Another	Vs	APPELLANT
The State of West Bengal and Another		RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 482
Penal Code, 1860 (IPC) — Section 313, 34, 406, 498A

Citation : (2009) 4 CALLT 182 : (2010) CriLJ 162 : (2010) 1 DMC 491 : (2010) 2 RCR(Criminal) 75

Hon'ble Judges : Partha Sakha Datta, J

Bench : Single Bench

Advocate : Joymalya Bagchi and S. Chatterjee, for the Appellant; Alok Kr. Mitra, Kallol Basu and Arijit Pyne for Respondent No. 2 and S.S. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Partha Sakha Datta, J.—By this application u/s 482 of the Cr.P.C. the husband and the in-laws of the O.P. No. 2 pray for quashing of proceeding being Bhowanipur P.S. Case No. 79 of 2006 dated 29th March, 2006 under Sections 498-A/406/313/34 of the Indian Penal Code corresponding to SC Case No. 106(4)08 (ST No. 4(7) of 2008) now pending before the Additional Sessions Judge, Fast Track Court No. 1 at Alipore of the District of South 24-Parganas.

2. It was a lengthy FIR lodged with the Deputy Commissioner of Police, Detective Department, Lalbazar by the O.P. No. 2 on 10th February, 2006 alleging against her father-in-law, petitioner No. 1/mother-in-law, petitioner No. 2 and the husband, petitioner No. 3, Intimacy between the petitioner No. 3 and the O.P. No. 2 developed through Internet. Marriage took place on 15th December, 2002, while registration thereof took place on 28th August, 2003. During honeymoon after marriage at Singapore, Malaysia it was detected that she had conceived but her husband persuaded her against her will to go for abortion. Medicines were

administered by the petitioner No. 3 who is a physician by profession and after return to India she was made to undergo abortion in the month of April/May, 2003. Then the husband left for abroad leaving her at the mercy of in-laws who subjected her to ill treatment and mental torture in different ways which have been narrated in the FIR. Her husband returned a month after on the ground of her father-in-law's ailments but then also ill treatment continued to be perpetrated upon her. Her husband took the side of his parents and stayed away separately for a month and would go for holidays. Allegedly her husband came to be involved in chatting with numerous girls on Internet. Ill treatment continued, unabated with no change in behaviour of her husband and in-laws. She was denied food for days. She was left alone in a room in the second floor while her mother-in-laws locked all rooms and kept the same in her possession and rest of the family stayed in the first floor with none to communicate to her. Her husband would beat her, punch her on her stomach, humiliate her and in many ways physical and mental torture became a routine affairs. Many events constituting alleged torture have been narrated in the FIR. On 23rd January, 2006 when her husband came alone he brutally beat her in presence of her mother-in-law, slapping her, punching her on her face and banging her head on the bathroom, finally dragging her to the bed so as to choke her. She left her in-law's house. Numerous jewellerys, clothing, furniture etc. were given in marriage which she left behind in her matrimonial home.

3. On this FIR, Bhowanipore P. S./DD case No. 79 dated 29th March, 2006 under Sections 498A/406, I.P.C. was registered. Numerous witnesses were examined, a number of documents were collected and upon closure of investigation the police submitted charge-sheet against the petitioner No. 1 and 2 under Sections 498A/406/34 of the I.P.C. and against the petitioner No. 3 under Sections 498A/406/313/34 of the I.P.C.

4. Learned Additional Sessions Judge, Fast Track Court No. 1 at Alipore by order dated 14th July, 2008 framed charges u/s 498A/406/34 of the I.P.C. against all the petitioners and separately u/s 313 of the Cr.P.C. against the petitioner No. 3. Dates were fixed for recording of the evidence of the prosecution witnesses but I am told that adjournments had to be granted on the ground of illness of the witnesses.

5. I have heard Mr. Jaymalya Bagchi appearing with Mr. Section Chatterjee for the petitioners, Mr. Alok Kr. Mitra appearing with Mr. Kallol Basu and Arijit Pyne for the O.P. No. 2 and Mr. S.S. Ghosh appearing for the State of West Bengal. It is not a case of quashing of an FIR or a petition of complaint. It is a case wherein petitioners-accused persons pray for quashing of the entire criminal case which ended in submission of charge-sheet under the aforesaid sections of the law against them following which the learned trial Court has framed charges. The investigating agency examined the O.P. No. 2 in course of investigation and a number of witnesses who are Pijush Dasgupta, (Father of the O.P. No. 2), Santa Dasgupta (mother of the O.P. No. 2), Sanjib Kr. Gupta, Chiranjib Gupta, Nabin

Mishra, Krishna Kanta Jha, Tapash Sarkar and other formal witnesses. The O.P. No. 2 gave more than one statement before the I.O. in course of investigation of the case. From the statements of the witnesses examined by the I.O. u/s 161, Cr.P.C. together with the FIR which is a longish one giving out instances and events of alleged torture and ill treatment there leaves no room to say that no prima facie case has transpired so as to frame charge against the petitioners under Sections 498A/406/34 of the I.P.C. The statements of the O.P. No. 2 made before the I.O. which in fact are supportive of the FIR are found to have been supported by her parents and other witnesses. Therefore, it cannot be gainsaid that it is not a case within the parameters of the law where inherent jurisdiction of this Court u/s 482 of the Cr.P.C. should be invoked for quashing of the criminal case. We must not lose sight of the fact that upon elaborate investigation charge-sheet has been submitted and the stage is ready for recording of evidence of the witnesses after framing of charge against the accused persons on 14th July, 2008. Mr. Bagchi, learned Advocate appearing for petitioners in fact did not or rather could not assail the charges under Sections 498A/406/34 of the I.P.C. and principally concentrated on the maintainability of the charge u/s 313 of the I.P.C. It is in essence the submission of Mr. Bagchi that the FIR was not registered u/s 313 of the I.P.C. The case was registered under Sections 498A/406/34 of the I.P.C.; so far as charge u/s 313 of the I.P.C. is concerned the FIR was not vociferous with regard to the alleged offence of miscarriage of child sans the allegation therein that against her will she was persuaded to go for abortion and while in Singapore she was administered medicine by her husband doctor. It has been submitted that after the FIR was registered and only during the investigation of the case there was a deliberate and mala fide mood to entangle the husband with more serious offence and with that object in view further statements were recorded by the I.O. with regard to the charge u/s 313 of the I.P.C. Thus further statements of the O.P. No. 2 made in course of investigation whereby there was addition of charge must not be taken at the face value and even if they are taken at face value they stand contradicted and wiped out by a consent form wherein the O.P. No. 2 signed as an expression of consent before the concerned nursing home for abortion of the child in the womb. Where there has been given consent for abortion by the O.P./No. 2 there cannot be any framing of charge u/s 313 of the I.P.C. It is submitted by Mr. Bagchi that there had been a courtship between the couple for a long time following which they got married and sometime after marriage they left for honeymoon abroad when it was detected that the lady had conceived but conception was without any planning of the couple and it was but natural that the couple decided not to have any child and the O.P. No. 2 agreed to have abortion. In such circumstances they returned to India and the lady underwent abortion in a nursing home before which she expressed her consent by signing in a requisite form which is final for all time to come.

6. Mr. Bagchi, learned advocate for the petitioner refers to the decisions in *United Flour Mills Co. Ltd. and Others Vs. The Corporation of Calcutta*, *Rishi Anand and*

Another Vs. Government of National Capital Territory of Delhi and Others, Union of India (UOI) Vs. Prafulla Kumar Samal and Another, Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, , State of Karnataka Vs. L. Muniswamy and Others, , Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another, and Keshub Mahindra v. State of Madhya Pradesh reported in 1996 SCC (Cri) 1124. The decision in United Flour Mills (supra) is in connection with a case under the P.F. Act. Here the maintainability of the revisional application u/s 482 of the Cr.P.C. was in question at the stage when a witness was examined. This decision does not in the circumstances of the case at hand apply. Similarly, the decision in Rishi Anand (supra) does not help the defence inasmuch as it was held that even if there was some omission in giving details about alleged entrustment of property of the informant and dishonest intention of the appellant, that by itself did not afford valid ground to quash proceedings against the appellant. Then decision of Union of India (supra) is to some extent relevant. It was held that the Judge has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case. It was equally observed that this does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. It was clarified further that the Judge has power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case has been made out, and it would depend upon the facts of each case and it is difficult to lay down a rule of universal application. It is not that there are no materials in the case at hand with regard to the charge u/s 313 of the Cr.P.C. The foundation of the charge was Laid in the FIR itself and it could be really difficult to gauze the probabilities or otherwise of the story. In Niranjana Singh (supra) also the same principle was reiterated. The learned advocate for the petitioners referred to an observation of the Hon'ble Supreme Court in Niranjana Singh which is reproduced below:

Therefore, when a law visits a person with serious penal consequences extra care must be taken to ensure that those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language of the law.

7. The aforesaid observations is out of context in the present case because the said observation was in connection with a case under the Terrorist and Disruptive Activities (Prevention) Act, 1987. State of Karnataka Vs. L. Muniswamy and Others, deals with High Court's power to quash a proceeding u/s 482 of the Cr.P.C. pending before the Sessions Judge on ground of insufficiency of evidence. Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another, case was in a fact situation where charges u/s 498A, I.P.C. was quashed against the two appellants. In Keshub Mahindra (supra) it was held that the Court has a limited jurisdiction to make only a prima facie appraisal of the charge-sheet and supporting material to decide whether the allegations constituted the offence. All the aforesaid decisions are all facts oriented and the general principle Laid down

is that the Court has to find out whether prima facie material is there to frame charge.

8. Contra, it has been submitted by the learned advocates for the State of West Bengal and the O.P. No. 2 that it is misnomer to suggest that the FIR did not begin with allegation of causing miscarriage of the child inasmuch as in the FIR itself it has been alleged that against her will she was persuaded to go for abortion. This fact is not foreign to the FIR and it has come to be established through investigation by examining further the O.P. No. 2 and other witnesses including the doctor concerned. It has been submitted by the learned advocate for the State of West Bengal and also the learned advocates for the O.P. No. 2 that signing in the printed consent form in the nursing home is a formality and the said consent cannot be said to be conclusive because it was obtained with a view to the O.P. No. 2's eagerness to kill the child in womb. The petitioner No. 3 administered some medicines which according to the medical expert were dangerous and it would have had resulted in the birth of a deformed child. I have been taken to the statements of the witnesses on this score by the learned advocate for the State of West Bengal in support of the argument that when after investigation charge-sheet has been Laid u/s 313 of the I.P.C. together with the other charges and when the learned trial Court has already proceeded with the trial of the case with the aforesaid charges this Court in exercise of inherent jurisdiction u/s 482 of the Cr.P.C. must not quash the charge and whatever the submissions of Mr. Bagchi are the same can be agitated during the trial at the time of cross-examination of the prosecution witnesses and it is for the learned trial Court to see on the basis of the evidence as may be adduced by the prosecution whether the said charge u/s 313 of the I.P.C. could be proved or not. Therefore it has been submitted that quashing of the charge u/s 313 of the I.P.C. at this stage of the case is improper and uncalled for.

9. In her statement before the I.O. the victim stated that thereafter already went to honeymoon with my husband to Bally, Singapore, Malaysia where in conceived. On return to my matrimonial home I was compelled for abortion due to the pressure of my husband, mother-in-law and father-in-law. The mother of the O.P. No. 2 stated before the I.O. that as her daughter conceived she was compelled to go for abortion and in that act her parents-in-law had conspired fully. In her further statement before the I.O. she stated that her abortion was done at private nursing home not at Park Circus, but at Princep Nursing Home at Princep Street, Calcutta on 28th April, 2003 without her consent due to the pressure of her husband and father-in-law and thereafter she was shifted to Jain Hospital at Howrah where-from she was discharged. She further stated that from the time of her abortion and till her discharge from the hospital her husband and father-in-law guarded her so that none could contact with her during this period. Her husband administered her pill during her honeymoon with proper knowledge as as doctor that a particular pill would cause miscarriage of child. She further stated that this abortion was done by her husband and in-laws with pre-plan and conspiracy. The father of the O.P. No. 2 also made a statement that his daughter

was compelled to undergo abortion at the instigation of her parents-in-laws. One Dr. Bimala Goenka who was acquainted with the petitioner No. 3 stated before the I.O. that the O.P. No. 2 was admitted in the Princep Nursing Home for abortion and during her abortion, the three petitioners herein would stay in that nursing home. Dr. Mrs. Milan Rani Biswas stated before the I.O. that the three petitioners came to her chamber with the O.P. No. 2 for the latter's abortion. When she learnt that it was their first issue she tried to discourage them for abortion but then the petitioner No. 1 and the petitioner No. 3 told her that in order to kill the child in the womb the petitioner No. 3 had administered medicine already to the O.P. No. 2 and if abortion was not done then the result of administering those medicines would result in birth of a deformed child. Professor and Head of the Department, Forensic and State Medicine, Dr. A.K. Gupta opined that the drugs administered indicated for the medical termination of pregnancy upto 49 days of pregnancy and normal development of foetus was likely to be hampered. Dr. Milan Rani Biswas and Dr. Bimala Goenka stated that during abortion in the nursing home and then in Jain Hospital the O.P. No. 2 was guarded by all the petitioners all throughout the time. In the context of the aforesaid evidence oral and documentary it is now difficult for this Court to say that the charge u/s 313 of the I.P.C. should be dropped. Learned advocate for the State submitted that on the basis of the materials on record it could not be said that the victim consented to abortion and that miscarriage was not caused in good faith in order to save the life of the O.P. No. 2. It has further been submitted by the learned advocate for the State that under what circumstances signature was put in by the O.P. No. 2 has been explained by her in her statement and on the basis of the statement of the O.P. No. 2, there remains no ground to quash the charge of Section 313 of the I.P.C. I am unable to disagree with the submissions of the learned Advocate for the State. Whether consent was voluntarily or not is a matter to be decided at the trial. Materials have been collected during investigation with regard to the charge of miscarriage of child and when the learned trial Court upon consideration of the materials has framed charges, I do not think that the exercise was improper and needs to be interfered with. In this connection I may refer to *Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and Another*, where the Hon''ble Supreme Court held that when trial Court finding a prima facie case prefers to frame charge against the accused the High Court should not interfere by probing into sufficiency of grounds for conviction of the accused and ordering his discharge.

10. Accordingly, application is dismissed. Let the trial be expedited.

11. Urgent xerox certified copy, if applied for, be given to the parties as expeditiously as possible.