

(2016) 06 CAL CK 0057

In the Calcutta High Court

Case No : Criminal Revision No.908 of 2015.

**Pritam Sarkhel - Petitioner @HASH The State of West Bengal and another
- Opposite parties**

Date of Decision : 15-06-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 109, Section 307, Section 323, Section 328, Section 498A

Citation : (2016) 3 HLR 254

Hon'ble Judges : Ranjit Kumar Bag, J.

Bench : Single Bench

Advocate : Mr. Saswata Gopal Mukherjee, Mr. Ranadeb Sengupta, Mr. Debasish Mukhopadhyay, Mr. Anirban Banerjee and Ms. Jeenia Rudra, Advocates, for the Petitioners; Mr. Ayan Basu, Advocate, for the Opposite Party/State; Mr. Joy Sengupta, Mr. S. Gangopadhyay and Mr. A

Final Decision : Disposed Off

Judgement

R.K. Bag, J. - The petitioners have challenged the criminal proceeding of G.R. No. 3604 of 2013 arising out of English Bazar Police Station Case No. 1032 of 2013 pending before the court of learned Chief Judicial Magistrate, Malda by filing this revision being registered as CRR No. 1583 of 2014. The said criminal proceeding of G.R. No. 3604 of 2013 has also been challenged by the petitioner by filing revision being registered as CRR No. 908 of 2015. Both the revisional applications are taken up together for hearing as the petitioners in both the revisions have prayed for quashing of G.R. No. 3604 of 2013.

2. The backdrop of two revisional applications is as follows:

The opposite party No. 2 filed a petition of complaint before the court of learned Chief Judicial Magistrate, Malda which was sent to the Officer-in-Charge of English Bazar Police Station for registration of FIR and causing investigation. Accordingly, English Bazar Police Station Case No. 1032 dated December 1, 2013 under Sections 498A/323/325/328/307/109 of the Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act came into existence. The police

investigated the said criminal case and submitted charge-sheet against all the petitioners for the offence punishable under Sections 498A/323/328/307/109 of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act. The petitioner - Pritam Sarkhel happens to be the husband of the opposite party No. 2. The petitioner -Badal Sarkhel and the petitioner - Archana Sarkhel happen to be the parents-in-law of the opposite party No. 2. Similarly, the petitioner - Shyamal Kumar Sarkhel happens to be the uncle-in-law of the opposite party No. 2. All the petitioners have prayed for quashing of the criminal proceeding.

3. Mr. Saswata Gopal Mukherjee, learned counsel for the petitioners submits that part of the offence took place within the territorial jurisdiction of the courts at Jalpaiguri and part of the offence took place within the territorial jurisdiction of the courts at Bengaluru, but the defacto complainant started the criminal proceeding against the petitioners before English Bazar Police Station at Malda and learned Magistrate at Malda has no territorial jurisdiction to try the instant criminal case. Mr. Mukherjee further submits that the defacto complainant filed an application before the court of learned Magistrate praying for amendment of the written complaint treated as FIR on the ground that the last incident of physical assault on the defacto complainant by the petitioner/husband took place at Malda on May 8, 2013 in stead of April 8, 2013 as reflected in FIR. By referring to the copy of the order dated August 19, 2013 passed in matrimonial proceeding being M.C. No. 3445 of 2013, Mr. Mukherjee submits that the competent civil court passed the decree for dissolution of marriage between the petitioner/husband and the opposite party No. 2 by decree of divorce. He argues that the opposite party No. 2 has started the criminal proceeding against the husband and in-laws after receiving summons of the said matrimonial proceeding from the competent civil court. According to Mr. Mukherjee, criminal proceeding against the petitioners is liable to be quashed.

4. Mr. Ayan Basu, learned counsel for the opposite party/State has referred to the averments made in the written complaint treated as FIR and submitted that part of the offence under Sections 3 and 4 of the Dowry Prohibition Act and part of the offence punishable under Section 498A of the Indian Penal Code took place within the jurisdiction of the court at Malda and as such the present criminal proceeding may continue before the court of learned Magistrate at Malda. He further submits that this Court cannot take into consideration the ex parte decree of divorce passed by the civil court against the opposite party No. 2 for quashing of the criminal proceeding initiated by the opposite party No. 2 against the petitioners. However, Mr. Basu submits in his usual fairness that the materials available in the case diary do not indicate any specific allegation against the petitioner - Shymal Kumar Sarkhel who happens to be uncle-in-law of the opposite party No. 2.

5. Mr. Joy Sengupta, learned counsel representing the opposite party No. 2 has referred to the written complaint treated as FIR and submitted that there are allegations against the petitioner - Shyamal Kumar Sarkhel and as such the

criminal proceeding cannot be quashed even against the petitioner - Shyamal Kumar Sarkhel. Mr. Sengupta has adopted the rest of the submission made by Mr. Basu.

6. The criteria laid down by the Supreme Court in paragraph 102 of "State of Haryana v. Bhajanlal" reported in 1992 SCC (Cri.) 426 for quashing of the criminal proceeding are as follows:

"102 ??????..

(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 cognisable 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 un-controverted 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 cognisable offence but constitute only a non-cognisable 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."

7. By applying the above test laid down by the Supreme Court for quashing of the criminal proceeding I have to decide whether any offence is made out against the petitioners from the written complaint treated as FIR and from the materials collected by the Investigating Officer in course of investigation of the case. The contents of the written complaint treated as FIR do not disclose any specific allegation against the petitioner - Shyamal Kumar Sarkhel who happens to be the uncle-in-law of the opposite party No. 2. Nor do I find any allegation against the

said petitioner from the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure. The logical inference is that no offence is made out against the petitioner - Shyamal Kumar Sarkhel and as such the continuation of the criminal proceeding against him will be an abuse of the process of the court. On consideration of the averments made in the written complaint treated as FIR and on consideration of statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure, I cannot persuade myself to hold that no offence is made out against the remaining petitioners for continuation of the criminal proceeding against them. On close scrutiny of the written complaint treated as FIR, I find that there is an allegation of physical and mental torture on the opposite party No. 2 for non-fulfilment of demand of wrist watch and a car in the house of parents of the opposite party No. 2 at Malda. There is also allegation in the FIR that on April 8, 2013 the husband of the opposite party No. 2 throttled the neck of the opposite party No. 2 in the house of her parents at Malda in order to pressurise her to go to the matrimonial home. The dispute raised by the opposite party No. 2 with regard to the date of the alleged incident as May 8, 2013 in stead of April 8, 2013 is left open for the decision of the trial court. On an analysis of the averments made by the opposite party No. 2 in the written complaint treated as FIR and on consideration of the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure, I find that part of the offence took place at Malda and part of the offence took place at Jalpaiguri and the part of the offence also took place at Bengaluru. In view of the provision of Section 178 of the Code of Criminal Procedure the court at Malda or the court at Jalpaiguri or at the court of Bengaluru has the territorial jurisdiction to try the instant case. In view of my above findings, I am unable to accept the contention made by learned counsel for the petitioners that the court at Malda has no territorial jurisdiction to try the instant criminal case.

8. It appears from copy of the decree of M.C. No. 3445 of 2013 that the matrimonial proceeding for divorce was instituted by the husband of the opposite party No. 2 on August 19, 2013 and ex parte order of divorce was granted on January 18, 2014. The present criminal proceeding is initiated by the opposite party No. 2 by filing a petition of complaint before the court of learned Chief Judicial Magistrate at Malda on November 25, 2013, though the FIR was registered on December 1, 2013. In view of the serious allegation of physical and mental torture of the opposite party No. 2 by the husband and parents-in-law for non-fulfilment of demand of dowry, I cannot persuade myself to hold that the instant criminal proceeding is instituted in a mala fide way after receiving the summons of divorce proceeding by the opposite party No. 2 in the month of September, 2013 as contended by learned counsel for the petitioners. In my view, this is not a fit case for quashing of the criminal proceeding on the ground of mala fide.

9. The above observations lead me to hold that the criminal proceeding of G.R. No. 3604 of 2013 pending before the court of learned Judicial Magistrate, Malda

is quashed so far as the petitioner - Shyamal Kumar Sarkhel is concerned. Learned Magistrate is directed to proceed against the co-accused persons in accordance with law as expeditiously as possible. The trial court will proceed with the hearing of this case without being influenced by the observations made by me in the body of the judgment, which have been made for the purpose of disposal of the revisional applications.

10. Both the criminal revisions are, thus, disposed of.

11. Let a copy of this judgement be sent down to the learned court below for favour of information and necessary action.

12. Urgent photostat certified copy of this judgment, if applied for, be given to the learned counsel for the parties upon compliance of all formalities.