
(2023) 08 CAL CK 0033
In the Calcutta High Court
Case No : Criminal Revision No. 909 Of 2020

Rabin Mondal

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 10-08-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 109, 406, 494, 498A, 504, 506
Hindu Marriage Act, 1955 — Section 13B
Code Of Criminal Procedure, 1973 — Section 97
Guardians and Wards Act, 1890 — Section 8

Citation : (2023) 08 CAL CK 0033

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Abhijit Kumar Adhya, Sumanta Ganguly

Final Decision : Dismissed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred against an order passed by the Learned Chief Judicial Magistrate, Howrah on 11.01.2019 taking cognizance on a complaint and thereafter transferring the said case to the Court of the Learned Judicial Magistrate, 3rd Court, Howrah who issued process after S/A on 30.08.2019 in complaint case no. 22C/2019 under Sections 498A/406/323/504/506/34 of the Indian Penal Code (T.R. 2/19) and also praying for quashing of the said proceedings.

2. The petitioner's/husband's case is that the opposite party no. 2 (complainant/ wife) of the petitioner (hereinafter referred as the 'said opposite party') lodged a written complaint being Complaint Case No. 22C/19 on the grounds that:-

i) The complainant got married to the accused no. 1 on 01.07.2012 according to Hindu Rites and Customs Act at the parent's house of complainant at Village & P.O. Polgostia, P.S. Jagatballavpur, District- Howrah-711414.

ii) As per the demand of accused no. 1 and his family, the father of the complainant gave cash of Rs.20,000/- and 3 ½ vori Gold ornaments and other articles as gifts.

iii) The complainant along with her all belongings went to the accused's house to lead her conjugal life.

iv) One male baby born to them on 19.08.2014 at Amta Hospital, has been named Prince Mondal.

v) It is stated that the accused no. 1 is a womanizer and is a habitual drunkard. On raising objection, the complainant has been assaulted by the accused no. 1 several times also on the instigation of the other in laws.

vi) On 27.10.2018 at 8 P.M. the complainant saw the accused no. 1 in a comprising situation with his 2nd Boudi namely Chompa Mondal and so she was threatened and assaulted.

vii) On 04.11.2018, the accused forcefully and illegally took the complainant's signature on blank paper and ousted the complainant on 23.11.2018 along with her 4 year old son, Prince Mondal. Since then the complainant has been staying at her father's house at Polgostia, P.S. Jagatballavpur, District-Howrah.

viii) On 06.12.2018, the father of the complainant brought the accused no. 1 to his house to amicably settle the matter but in the evening the accused assaulted the complainant and went out with the minor son on the pretext of purchasing chocolate, and has illegally taken away their 4 year old son, Prince Mondal from the complainant.

ix) On 23.11.2018 all the accused persons ousted the complainant from her matrimonial house after taking all her belongings and since then the complainant has taken shelter at her father's house at Polgastia, P.S. Jagatballavpur, District-Howrah and on 06.12.2018 the accused no. 1 took away their 4 year old son, Prince Mondal from the custody of complainant from village & P.O. Polgostia, P.S. Jagatballavpur, District-Howrah.

3. It is the case of the petitioner/husband that the said opposite party used to leave the house, without informing the other members, leaving her minor son behind with other members of family.

4. That after much persuasion and much effort he came to know from her that she was in love with another youth in the locality and wanted to marry him.

5. It is further stated that as per the wishes of the said opposite party they filed a Matrimonial Suit being No. 1247 of 2018 before the Learned District & Sessions Judge, Howrah under Section 13B of the Hindu Marriage Act, 1955 for mutual divorce on 11.12.2018.

6. That after filing of the said petition for mutual divorce, she left the house of the petitioner. As such a G.D.E. No. 1177 dated 24.11.2018 at Amta P.S. was

registered and her parents were also informed accordingly.

7. The petitioner then came to know that the said opposite party got married to one Prasanta Mishra. As such he filed a complaint with the police, which was registered as Amta P.S. Case No. 23/19 dated 23.01.2019 under Sections 494/109 of the Indian Penal Code.

8. The petitioner states that suddenly he came to know that the instant case has been instituted by the said opposite party.

9. The complainant also filed a petition for recovery of the minor son under Section 97 of the Code of Criminal Procedure and also filed a petition under Section 8 of the Guardians and wards Act which was numbered as Misc. Case No. 39/2019.

10. The opposite party no. 2's/wife's case is that:-

- i) She has been tortured by her husband and in-laws since her marriage.
- ii) Her minor son has been forcibly taken away from her.
- iii) Her husband is allegedly in an illicit relationship with his sister-in-law (boudi).
- iv) She has been driven out of her matrimonial home.
- v) She has filed a proceeding for the custody of her child.

11. The petitioner/husband's case is that:-

- i) The opposite party has left her matrimonial home voluntarily after the suit for divorce by mutual consent was filed.
- ii) The petitioner allegedly eloped and married one Prasanta Mishra.
- iii) After the petitioner filed the present case on 11.01.2019, her husband filed a case against her on 23.01.2019 under Sections 494/109 IPC.

12. The petitioner is staying in her parents' house after 6-7 years of marriage. Her father had also tried to settle the matter. Her child has been taken away. Her husband is allegedly having an affair with his boudi. All this prima facie show that there is prima facie case as alleged against the opposite party to proceed towards trial.

13. All these allegations, facts and materials on record, are required to be proved by way of evidence at the time of trial.

14. The revisional application being CRR 909 of 2020 is accordingly dismissed.

15. All connected applications, if any, stands disposed of.

16. Interim order, if any, stands vacated.

17. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

18. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.