
(2010) 08 CAL CK 0031
In the Calcutta High Court
Case No : CRR No. 2443 of 2008

Raj Kumar Das Karmakar and Others	APPELLANT
Vs	
The State of West Bengal and Another	RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Hindu Marriage Act, 1955 — Section 13
Penal Code, 1860 (IPC) — Section 111, 341, 352, 363, 364

Citation : (2010) 08 CAL CK 0031

Hon'ble Judges : Kalidas Mukherjee, J

Bench : Single Bench

Advocate : Milon Mukherjee, Biswajit De and Kumar Jyoti Tewari, for the Appellant; Kasem Ali Ahmed, for the Respondent

Final Decision : Dismissed

Judgement

Kalidas Mukherjee, J.—This is an application u/s 482 Cr.P.C. assailing the order dated 24.6.2008 passed by learned Additional Sessions Judge, Fast Track Court, Ghatal in Sessions Trial No. 1/March/2008 arising out of G.R. case No. 140 of 2003 whereby the learned Trial Judge rejected the application for discharge filed by the petitioners.

2. The case of the prosecution, in short, is that the O.P. No. 2 was married with the petitioner No. 1 on 13.12.1999. O.P. No. 2 has been living separately from her husband. The petitioner No. 1 filed a petition u/s 13 of the Hindu Marriage Act praying for divorce against the O.P. No. 2 on 23.2.2001. In order to harass the petitioner O.P. No. 2 lodged a complaint which was sent by the learned Court to the P.S. u/s 156(3) Cr.P.C. It has been alleged therein that when the O.P. No. 2 was going to her relative's house she was molested by accused No. 1 Raj Kumar Das Karmakar and accused No. 3 Shyamal Das Karmakar. It has been further alleged that accused No. 1 and 3 tried to abduct her with the help of their motorcycle and threatened to kill her, her father and elder brother.

3. Upon receipt of the complaint which was sent to the P.S. u/s 156(3) Cr.P.C., Daspur P.S. case No. 41 dated 12.6.2003 was started u/s 341/506(2), 363, 364, 352/111 I.P.C. against the present petitioners. Upon completion of investigation the I.O. submitted charge sheet. Petitioner No. 3 filed an application being No. CRR 783 of 2006 u/s 482 Cr.P.C. for quashing of the proceedings and the Hon''ble Court after hearing the learned Advocates of both sides was pleased to dispose of the matter giving liberty to the petitioner to raise all the grievances before the learned Trial Court at the appropriate stage and the learned Trial Judge was directed to take the same into consideration and pass necessary order according to law. In terms of the liberty granted by the Hon''ble Court in the aforesaid criminal revision, the petitioners filed an application before the learned Court below praying for discharge which was rejected by the impugned order.

4. Mr. Mukherjee learned Counsel appearing for the petitioners submits that in the petition of complaint the father and mother are the witnesses, although, they were not present at the time of the alleged occurrence. Mr. Mukherjee further contends that there is no local witness of the alleged incident and the I.O. in the charge sheet has also mentioned that no local witness was available and the complainant could not produce any local witness. Mr. Mukherjee thus contends that learned Trial Court did not consider this point and rejected the petition filed by the accused persons holding that it was not maintainable. It is contended by Mr. Mukherjee that if the proceedings are allowed to continue in the learned Court below, it would amount to abuse of the process of the Court.

5. Mr. Kasem Ali Ahmed appearing on behalf of the State opposed the revisional application contending that earlier revisional application was filed praying for quashing of the proceedings of this case and it was rejected. It is contended that since the earlier revisional application praying for quashing of the same proceeding was rejected by the Hon''ble Court, this subsequent application in the selfsame case is not maintainable.

6. Mr. Kasem Ali Ahmed further contends that the revisional power of this Court is very limited and it should be sparingly and cautiously exercised. The learned Counsel has referred to and cited the decisions reported in (2010) 2 C.Cr.L.R. (SC) 108 [K. Neelaveni v. State Rep. By Inspector of Police and Ors.]; State of Bihar Vs. Rajendra Agrawalla, ; State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., Rajesh Bajaj Vs. State NCT of Delhi and Others,

7. In the case of K. Neelaveni v. State Rep. By Inspector of Police and Ors. (Supra) there was allegation u/s 498A, 494 and 406 I.P.C. and it has been held that the allegations in the First Information Report clearly constitutes the offence alleged and the quashing of the charge sheet before the exercise of the discretion by the Magistrate was improper and the order of the High Court was set aside.

8. In the case of State of Bihar v. Rajendra Agrawalla (Supra) it has been held that in case of quashing of criminal proceedings at initial stage, the power u/s

482 should be very sparingly and cautiously exercised.

9. In the case of State of Maharashtra v. Som Nath Thapa (Supra) it has been held that at the time of framing of charge, probative value of statement of witness cannot be gone into.

10. Having heard the learned Counsel appearing for the parties and upon consideration of the materials on record I find that Mr. Mukherjee has raised the points touching the merits of the case. Since, the learned Trial Judge has framed the charge holding that there was ground for presumption that the accused persons committed an offence punishable u/s 341, 352, 363 and 364/500 I.P.C. and fixed a schedule for recording the evidence of the witnesses, I find that at this stage there is no scope to consider the merits of the case.

11. It is not a fit case for quashing of the proceedings u/s 482 Cr.P.C. The application u/s 482 Cr.P.C., accordingly, stands dismissed.

12. Let a copy of this order be sent to the learned Court below immediately. Interim order, if any, stands vacated.

13. Urgent Photostat certified copy, if applied for, be handed over to the parties as early as possible.