

(2008) 08 CAL CK 0001
In the Calcutta High Court
Case No : C.R.R. No. 2248 of 2008

Ramprahalad Mishra and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2008) 4 CALLT 214 : (2008) 4 CHN 921

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Himangshu De, Navanil De and Suman De, for the Appellant;
Krishna Ghosh and Abhijit Kumar Adhya, for the Respondent

Judgement

Ashim Kumar Roy, J.—In the instant criminal revisional application invoking inherent jurisdiction of this Hon'ble High Court, the petitioner challenged an order of framing charge under Sections 498A/306 of the Indian Penal Code in connection with the Sessions Case No. 5/08 now pending before the learned Additional Sessions Judge, Fast Track, 1st Court, Asansol.

2. By the aforesaid order the charge under Sections 306/498A of the Indian Penal Code was framed as against the husband of the victim girl viz. Amal Mishra and the present petitioners, who are happened to be the relations of her husband. The petitioner No. 1 is the father-in-law, the petitioner No. 2 is the mother-in-law and the rests three petitioners are the brother-in-law of the victim girl.

3.It is pertinent to note that the husband Amal Mishra has not joined in the instant criminal revisional application as a petitioner with his other relations.

4. It is a settled legal position since an order of framing charge affects personal liberty of a citizen substantially it is the duty of the Court to consider judicially, whether on the materials on which the prosecution proposed to prosecute the

accused, makes out a prima facie case justifying framing of charge or not. At this stage it is not required for a Court to enter into a roving and fishing enquiry and to appreciate and weigh the materials on record for coming to a conclusion as to whether sufficient materials have been produced or not for convicting the accused. The Court is to see on the materials proposed to be adduced by the prosecution, even if it is fully accepted to be true on its face value and before it is challenged by cross-examination or rebutted by defence evidence, if any, a prima facie case of the commission of offence by the accused has been made out or not.

5. Heard the learned advocates appearing on behalf of the parties. Perused the Case Diary containing the materials on which the charge-sheet has been submitted and the prosecution proposed to rely against the petitioners in the trial.

6. In the First Information Report of the case lodged by the father of the victim girl it has been alleged that within 5/6 months of the marriage of his daughter the present petitioners along with her husband started torturing her both physically and mentally on demand of dowry and the victim girl whenever met the complainant, complained about such torture. On January 1st, 2004 they got an information over phone that his daughter has suffered burn and has been admitted in a Hospital where on the next day she succumbed to her injuries.

7. It is further alleged that she committed suicide being unable to bear torture perpetrated upon her by her husband and the other members of his family i.e. the petitioners herein.

8. I find during the course of investigation the police examined the complainant, his wife, his son and one of their friends and recorded their statement u/s 161 of the Code of Criminal Procedure. Upon prima facie perusal of such statement I find they have reiterated the version of the complainant made in the First Information Report i.e. about the demand of dowry and torture upon her and on that account and also about the commission of suicide by her being unable to bear such torture.

9. I further found that the police during investigation examined the neighbours of the accused persons viz. Biswanath Mishra, Sohan Panda, Swapan Gope as well as Dr. Prasun Roy, who attended the victim girl at the Asansol Sub-Divisional Hospital and recorded their statements u/s 161 of the Code of Criminal Procedure. Having taken a prima facie look of those statements I find that according to the said witnesses that they never noticed any serious dispute or quarrel between the victim and the mother-in-law except quarrel which is very normal in every family. It was also their statement that at the time of the alleged incident none of the present petitioners were present in the house except the husband Amal Mishra and on that day over the issue of going to her parents home there was some altercation between the husband and the wife and thereafter when the husband was sitting outside the house she set her on fire.

10. From the statement of the Dr. Prasun Roy, who attended the victim girl at the Asansol Sub-Divisional Hospital as well as from the bed head ticket I find that

she stated to the doctor that she herself ablazed her by pouring kerosene on her person after altercation with her husband.

11. Thus, from a prima facie perusal of the evidentiary materials on record, I do not find any materials as against the present petitioners justifying framing of charge against them u/s 306 of the Indian Penal Code. However, on the statement of the complainant and his relations there are allegations of torture upon her on demand of dowry.

12. Accordingly, this criminal revision stands partly allowed. While the charge against the petitioners u/s 306 of the Indian Penal Code stands quashed, the charge u/s 498A of the Indian Penal Code against them is sustained.

13. I, make it clear none of the observation made hereinabove would bind the trial Court and the trial Court shall come to its own finding as to the guilt or innocence of the accused on the evidence to be recorded during the trial.

14. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.