

(2004) 03 CAL CK 0071
In the Calcutta High Court
Case No : C.R.R. No. 630 of 2004

Sk. Salauddin and Others

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 24-03-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 307, 313, 406, 498A

Citation : (2004) 3 CALLT 463 : (2005) 1 DMC 793

Hon'ble Judges : Provudha Narayan Sinha, J

Bench : Single Bench

Advocate : Debasish Roy and Shamsher Ali, for the Appellant; Swapan Kumar Mallick, for the Opposite party No. 1 and Sandipan Ganguly, for the Opposite Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

P.N. Sinha, J.—This revisional application u/s 482 of the Code of Criminal Procedure (hereinafter called the Code) has been preferred by the petitioners praying for quashing the criminal proceeding, being C.G.R: Case No. 3816 of 2000 under sections 498A/406/313/120B of IPC now pending in the Court of the learned Sub Divisional Judicial Magistrate (hereinafter called the SDJM), Alipore.

2. Petitioners' contention is that, the opposite party No. 2 filed a complaint in the Court of learned SDJM, Alipore making allegation of persistent torture, ill-treatment on her demanding dowry against the petitioners. The said complaint was sent to O.C., Ekbalpur P.S. for investigation treating the complaint as FIR u/s 156(3) of the Code and on the basis of it Ekbalpore P.S. case No. 255 dated 15.11.2000 was started against the petitioners under sections 498A/406/313/307/120B of IPC. After completing investigation the police submitted charge sheet against these seven petitioners under sections 498A/406/313/120B of IPC and the learned SDJM received the charge sheet on 7.4.02. Long before that by a letter dated 11.9.01 written by the de facto

complainant O.P. No. 2 wife addressed to O.C., Ekbalpur P.S. accompanied by a copy of affidavit affirmed by her before the learned Judicial Magistrate, 2nd Court, Alipore on 10.09.01, it was stated by her that she does not like to proceed with the instant case against the accused persons for the welfare of her peaceful conjugal life as she was staying with her husband since last more than two months. In spite of that letter written by the de facto complainant wife addressed to O.C., Ekbalpur P.S. the police submitted the charge sheet.

3. Referring to the decisions of B.S. Joshi and Others Vs. State of Haryana and Another, and Smt. Swati Verma Vs. Rajan Verma and Others, learned advocate for the petitioners contended that when the wife has written letter addressed to O.C., Ekbalpur P.S. that she does not like to proceed further with the case started on the basis of her complainant, the investigating Office (hereinafter called the I.O.) should have considered the matter and should not have submitted charge sheet. The Supreme Court has clearly observed that it is the duty of Court to encourage genuine settlement of matrimonial disputes. The hyper technical view would go against interests of women and against the object in which the provision was added. The Supreme Court has made it clear that in a situation like the present one where the husband and wife have come to amicable settlement the High Court should exercise inherent powers to quash the criminal proceeding.

4. Learned advocate appearing for the O.P. No. 2 submitted that the O.P. No. 2 wife lodged the complaint on the basis of which this case was started. Subsequently at the intervention of well wishers of the family and friends all the difference and dispute between them has been amicably settled and she is now living with her husband at her matrimonial home. Accordingly, the impugned criminal proceeding may be quashed and the wife O.P. No. 2 has affirmed an affidavit in this respect.

5. Learned advocate appearing for the State submitted that allegations in the complaint were serious but, when subsequently the wife and the husband are now living together peacefully the Court may pass necessary order.

6. After considering the submissions of the learned advocates and materials on records and also the papers produced before me by the parties, I find that, though the wife lodged the complaint earlier giving rise to Ekbalpore P.S. Case No. 255 dated 15.11.2000 under sections 498A/406/313/120B of IPC and charge-sheet was submitted on 8.4.02 before the learned SDJM but before that, the dispute between the husband and wife was settled. The O.P. No. 2 wife by a letter dated 11.09.01 informed the O.C., Ekbalpore P.S. regarding her intention not to proceed with the said case as she is living peacefully with her husband at matrimonial home after all dispute was amicably settled at the intervention of relatives and friends. The husband and wife were also present in Court and the wife stated frankly that she is living peacefully in her matrimonial home and there is no dispute now and the criminal proceeding may be dropped.

7. The Supreme Court in B.S. Joshi and Others Vs. State of Haryana and

Another, : in Harpit Singh Anand v. State of West Bengal reported in 2003(7) Supreme 347 and Smt. Swati Verma Vs. Rajan Verma and Others, has made it clear by observing that it is the duty of the Court to encourage genuine settlement of matrimonial disputes. The apex Court of India also observed that, "The Hyper-technical view would be counter productive and would act against interest of women and against, the object for which this provision was added.....There is every likelihood that non existence of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier."

8. The instant criminal proceeding is based mainly on the evidence of the wife, the informant. If out of settlement with the husband and oilier accused persons she does not appear in Court or say nothing in favour of the prosecution case, the prosecution case would definitely fail. When the husband and wife have settled their disputes between themselves and arc living together peacefully and the wife does not intend to proceed further with the criminal proceeding it is desirable that the High Court should exercise its inherent jurisdiction to quash the criminal proceeding. It would be an abuse of process of Court to continue the criminal proceeding further. It is a fit case where this Court should exercise its inherent power to quash the criminal proceeding to meet the ends of justice.

9. In view of the discussions made above the criminal proceeding being C.G.R. Case No. 3816/2000 arising out of Ekbalpur P.S. Case No. 255 dated 15.11.2000 now pending in the Court of the learned SDJM, Alipore is hereby quashed.

The revisional application accordingly succeeds and is allowed.

Send a copy of this order to the learned SDJM, Alipore for information and necessary action.

Xerox plain copy be supplied to the parties duly attested by Assistant Registrar (Court) as expeditiously as possible.