
(2020) 02 CAL CK 0086

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 2763 Of 2019

Swapan Banerjee & Anr

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 19-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 34, 120B, 307, 384, 406, 498A, 506(2)
Dowry Prohibition Act, 1961 — Section 4

Citation : (2020) 02 CAL CK 0086

Hon'ble Judges : Suvra Ghosh, J

Bench : Single Bench

Advocate : Pawan Kumar Gupta, Sofia Nesar, Sudip Ghosh, Bitasok Banerjee, Somopriyo Choudhury, G. Patra, Subrata Mukherjee

Final Decision : Allowed

Judgement

Suvra Ghosh, J

1. In the present application under section 482 of the Code of Criminal Procedure, the petitioners have prayed for quashing the proceeding in

connection with Tamluk Police Station case No. 353 of 2019, dated 04-07-2019, under sections 498A/406/384/307/506(2)/34/120B of the Indian Penal

Code, 1860 and Section 4 of the Dowry Prohibition Act, pending before the Learned Chief Judicial Magistrate, Purba Medinipur, after being registered

as G.R. Case No. 1342 of 2019.

2. The contention of the petitioners, in brief, is that opposite party no. 2 lodged complaint against her husband Tuhin Mahato and other members of her

matrimonial family only with the intention of depriving them of the custody of her minor child. The First Information Report does not reveal any

offence against or role played by the petitioners in commission of such offence. Opposite party no. 2 used to reside with her husband in Mumbai

whereas the other accused persons resided in Barrackpore. The petitioners are the neighbours of the matrimonial family of the defacto

complainant/opposite party no. 2 and have been falsely implicated in this case. They are not related to the defacto complainant in any manner and no

allegation under section 498A of the Indian Penal Code is maintainable against them. They have obtained anticipatory bail from this Court earlier. The

allegations made in the complaint are manufactured, false and absurd and do not constitute any offence against the petitioners. As such, such

proceeding is required to be quashed in order to avoid abuse of the process of the Court.

3. Opposite party no. 1/State produced the case diary along with report. It appears from the report that the petitioners are the paternal mother in law

and father in law of the defacto complainant (pish-shasur and pishi-shasuri) and played an active role in provoking the other accused persons in

torturing the defacto complainant.

4. Opposite party no. 2 vehemently opposed the prayer of the petitioners and submitted that the petitioners are members of the matrimonial family of

the defacto complainant and were actively involved in meting out cruelty upon the defacto complainant. It is further submitted that the jurisdiction of

the Court with regard to the commission of the alleged offence cannot be considered before filing of charge sheet. Investigation is in progress and the

truth and veracity of the allegations made out against the petitioners are to be assessed by way of evidence and the entire proceeding cannot be

quashed at such preliminary stage of investigation of the case.

5. On careful scrutiny of the First Information Report, it is evident that the main thrust of the allegations is against accused nos. 1-5 who are the

husband of opposite party no. 2 and other members of her matrimonial family. Though the petitioners have been arraigned as accused nos. 6 and 7 in

the F.I.R., the role attributed to them is that they instigated accused nos. 1-3 against her during their frequent stay in her flat at Thane. The F.I.R. is

silent with regard to the relationship of the petitioners with opposite party no. 2.

6. Pursuant to the written complaint, the Investigating Officer took up the investigation of the case on 04-07-2019 and proceeded with such

investigation substantially. The Investigating Officer recorded statement of the complainant and her relatives and strangely enough, no independent

witness or other witnesses from the locality of the matrimonial home of the complainant were examined. In her statement before the Investigating

Officer on 10-07-2019, the defacto complainant implicated her husband, parents in law, sister in law (jaa) and brother in law (bhasur). The names of

the petitioners transpired in the subsequent statement of the defacto complainant before the Investigating Officer and it was alleged that the petitioners

being the paternal mother in law and father in law of the defacto complainant instigated the other accused persons.

7. It is a fact that jurisdiction under section 482 of the Code should be exercised with extreme care, caution and circumspection and should not be used

to stifle or axe down a legitimate prosecution. The test is whether the uncontroverted allegations as made out in the complaint prima facie establish the case and also whether continuation of such complaint shall amount to abuse of the process of law.

8. In the case in hand, though allegation against the petitioners is under sections 498A/406/384/307/506(2)/34/120B of the Indian Penal Code and

section 4 of the Dowry Prohibition Act, the F.I.R. is bereft of any material comprising any of the said allegations against the petitioners. Save and

except a general and omnibus allegation of instigation by the petitioners in the F.I.R. as well as in course of investigation, there is nothing on record

which suggests a prima facie case against them. The allegation of instigation is also not supported by any cogent material and does not relate to any

specific act or incident. Allegations in the F.I.R are undoubtedly grave and such allegations ought to be taken serious note of and redressed in

accordance with law. It is also trite law that graver the offence, stricter is the burden of proving the same and in the least, a prima facie case is

required to be made out by the aggrieved. In the present case, no prima facie case has been made out against the petitioners in the F.I.R. itself. The

F.I.R. is also silent regarding relationship of the petitioners with the defacto complainant and strangely enough, the first statement of the defacto

complainant recorded by the Investigating Officer also does not speak of such relationship. Such alleged relationship has been brought into the picture

at a subsequent stage of investigation upon recording further statement of the

defacto complainant. Such developments cannot be given much weight as it appears to have been made in order to improve the case of the complainant. No reason has been assigned by the complainant as to what prevented her from disclosing her alleged relation with the petitioners despite having knowledge of the same even prior to lodging the complaint.

9. Upon consideration of the entire material on record and taking into account the contents of the complaint itself, I am of the view that the complaint

does not disclose any criminal offence under sections 498A/406/384/307/506(2)/34/120B of the Indian Penal Code, 1860 and Section 4 of the Dowry

Prohibition Act against the petitioners and continuation of such proceedings against the petitioners shall amount to abuse of the process of the court.

10. In the result, the proceedings in respect of the petitioners in G.R. Case No. 1342 of 2019 pending before the Learned Chief Judicial Magistrate,

Purba Medinipur, in connection with Tamluk Police Station Case No. 353 of 2019 dated 04-07-2019, under sections 498A/406/384/307/506(2)/34/120B

of the Indian Penal Code, 1860 and Section 4 of the Dowry Prohibition Act is liable to be quashed.

11. CRR 2763 of 2019 is allowed accordingly. The proceeding in G.R. Case No. 1342 of 2019 pertaining to the petitioners and pending before the

Learned Chief Judicial Magistrate, Purba Medinipur, is quashed.

12. The proceedings against the other accused persons of the case shall proceed in accordance with law and shall not be influenced by any observation made in the body of this judgment.

13. The petitioners be released at once and discharged from their bail bonds.

14. There will be no order as to costs.

15. Copy of this judgment along with L.C.R. be sent down to the trial Court at once.

16. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.