
(2012) 05 CAL CK 0080
In the Calcutta High Court
Case No : C.R.R. No. 2275 of 2011

Tatai Mondal

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 17-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 161, 165(1), 397, 402
Penal Code, 1860 (IPC) — Section 107, 111, 306, 375, 376

Citation : (2012) 3 CALLT 593 : (2012) 4 CHN 105 : (2013) 1 Crimes 399

Hon'ble Judges : Joymalya Bagchi, J

Bench : Single Bench

Advocate : Subir Ganguly and Mr. Sabyasachi Mondal, for the Appellant;
Anasuya Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Joymalya Bagchi, J.—This application under Sections 397/402 read with Section 482 of the Code of Criminal Procedure Code, 1973 has been filed for quashing of a proceeding in G.R. Case No. 243/2008 arising out of Mayureswar P.S. Case No. 44 dated 01.05.2008 under Sections 376/306/493 of the Indian Penal Code. The contention of the petitioner is that the allegations in the impugned charge-sheet does not disclose the essential ingredients of the alleged offences.

2. The factual matrix resulting in the initiation of the criminal proceeding which is as follows :

That on 01.05.2008 the de facto complainant Nirmal Sarkar, the father of the victim girl, Seuli Sarkar, lodged a written complaint with the Inspector-in-Charge, Mayureswar P.S. alleging that for the last one and half years the petitioner on the false promise of marrying the victim girl had deceitfully procured her consent to cohabit with her at various places on repeated occasions.

On 27.04.2008 the petitioner bluntly refused to marry the victim girl, unable to bear with such treachery, the victim girl ended her life by consuming poison on

29.04.2008. The investigation in the instant case resulted in the filing of a charge-sheet against the petitioner under Sections 376/306/493 of the Indian Penal Code and the learned Magistrate by order dated 15.04.2009 has taken cognizance thereon and issued warrant of arrest against the petitioner.

3. Being aggrieved by such institution of criminal proceeding, the petitioner has approached this Court.

4. Mr. Ganguly, learned lawyer appearing for the petitioner, submits that the allegations made in the impugned charge-sheet do not disclose the essential ingredients of the alleged offences. He submits that the allegations in the charge-sheet discloses a consensual sexual relationship between the parties and also does not disclose the ingredient of abetment as defined u/s 107 of the Indian Penal Code for the commission of suicide by the victim.

5. In support of his contention, the learned advocate has relied upon the cases reported in (2011) 2 C Cr L R (SC) 698 (K.P. Thimmappa Gowda Vs. State of Karnataka) and (2011) 2 C Cr. L R (Cal) 638 (Shyamal Mukherjee & Ors. Vs. State of West Bengal).

6. Ms. Sinha, learned advocate appearing for the State, submits that there is sufficient material in the case diary disclosing the ingredients of the alleged offences she relies on the statements of witnesses which shows recorded during investigation that on a dishonest promise of marriage the victim girl was deceitfully induced to give consent to sexual intercourse and hence such consent cannot be construed to be a free one u/s 90 of the Indian Penal Code.

7. She further submits that whether the act of the accused constituted abetment u/s 107 of the Indian Penal Code has to be appreciated in the facts of each case and no straitjacket formula can be evolved thereto. She also submits that there are also ingredients of the offence punishable u/s 493 of the Indian Penal Code.

8. I have considered the submission of the parties and I have also gone through the statements of the witnesses recorded u/s 161 Cr.P.C., 1973 during investigation.

9. Quashing of a criminal case at the preliminary stage is an exception to the rule that every charge of commission of an offence crime ought to be decided through a full-fledged trial. It is only in the exceptional cases as illustrated through various decisions of the Apex Court that this Court in exercise of its inherent power may quash a criminal case at its inception to prevent an abuse of process of Court or in the interest of justice.

10. In the case of R.P. Kapur Vs. State of Punjab reported in AIR 1960 SC 865 the Supreme Court held as follows :

"Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court under S. 561-A of the Code. The said section saves the inherent power of the High Court to make such

orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case the magistrate before whom the police report has been filed under S. 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused persons may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused persons do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S. 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate,

and ordinarily it would not open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

11. Similarly in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, the Supreme Court held as follows :

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers u/s 165 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155 (2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

12. In the light of the aforesaid proposition of law let me test the arguments of the parties in the instant case. The uncontroverted allegations in the impugned charge-sheet and the statement of witnesses appended thereto clearly establish that the victim had been induced on the false promise of marriage to give consent to the sexual intercourse. Whether such inducement vitiated her consent as defined in terms of Section 90 of the Indian Penal Code is a matter for appreciation of the evidence which can be gone in a full-fledged trial.

13. Section 375 of the Indian Penal Code defines the offence of rape. One of the categories of sexual intercourse which falls within the definition of "rape" under the said Section, is where a sexual intercourse with a woman is done "without her consent". Section 90 of the Indian Penal Code, provides for the various circumstances which vitiates consent of a party for the purposes of the said Penal Code. Section 90 read as follows :

Section 90. A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person

if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child

unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

14. It is therefore clear that if consent of a person is procured under fear of injury or under a misconception of fact and if the perpetrator is aware or has reason to believe with consent has been procured as a consequence of such fear or misconception, such consent shall not be construed to be a valid one.

15. Reading the provisions conjointly it is clear that if a man commits sexual intercourse with a woman knowing or having reason to believe that her consent to such act is procured under fear of injury or by a misconception of fact, it would be understood that such sexual intercourse has been committed "without the consent" of the woman and would fall within the definition of "rape" u/s 375 of the Penal Code. In the instant case it would not be prudent to hold that consent of the victim was not procured on the basis of misconception of fact arising out of the false promise of marriage at this preliminary stage. It would require leading of evidence and appreciation thereof in a regular trial to come to a conclusion of the existence of such vitiating factor qua consent of the victim.

16. Secondly, the argument whether the blunt refusal to marry after having

cohabited for a number of times with the victim girl on the false promise of marriage would constitute an act of abetment to suicide of the victim or not is to be judged in the facts of each case, as rightly argued by the learned advocate for State. Chapter V of the Indian Penal Code deals with abetment of offences. The said Chapter enumerates various provisions which render acts or illegal omissions as culpable on the anvil of constructive penal liability, namely, abetment. Section 111 of the Penal Code reads as follows :

Section 111. Liability of abettor when one act abetted and different act done. :

When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

Proviso

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment. A reading of this Section would show that a person may be liable for abetting an act which he did not intend or instigate but the same had occurred as a probable consequence of such abetment.

17. Applying this provision to the facts of the instant case I feel it is premature to conclude that the suicide of the victim was not a probable consequence of the conduct of the petitioner. To pre-judge this issue prior to a trial would amount to a travesty of justice.

18. The judgements cited by the learned lawyer for the petitioner are decisions rendered by the Courts after a full-fledged trial on evidence and cannot come in aid of the petitioner's prayer for quashing at this preliminary stage.

19. For the aforesaid reasons, I do not find any merit in the instant revisional application and the same is dismissed.

20. Any observation made in this judgement shall have no binding effect on the trial Court in the subsequent stages of the proceeding and the latter shall be at liberty to decide the case independently on the basis of the materials/evidence brought on record. Urgent certified photostat copy of this order be given to the parties, if applied for, subject to compliance with all necessary formalities.