

(2024) 01 CAL CK 0072
In the Calcutta High Court
Case No : Criminal Revision No. 1405 Of 2018

Tusar Kanti Kar & Anr.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 24-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 34, 325, 406, 498A, 506, 509
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 161, 482

Citation : (2024) 01 CAL CK 0072

Hon'ble Judges : Bibhas Ranjan De, J

Bench : Single Bench

Advocate : Jayanta Narayan Chatterjee, Moumita Pandit, Supreem Naskar, Jayashree Patra, Ritushree Banerjee, Pritha Sinha, Bhaskar Mondal, Bidyut Kumar Ray, Sima Biswas, Malabika Roy Dey

Final Decision : Allowed

Judgement

Bibhas Ranjan De, J

1. The present revisional application has been preferred praying for quashing of the proceedings being A.G.R. No. 2055/2017 pending before the Learned Additional Chief Judicial Magistrate (for short ACJM), Alipore arising out of Netaji Nagar Police Station Case no. 134 of 2017 dated 26.04.2017 under Sections 498A/325/506/509/34 of the Indian Penal Code (for short IPC) and addition of Section 406 of IPC by an order dated 31.05.2017 passed by the Ld. ACJM, Alipore.

Brief Facts:-

2. Arunita Paul/opposite party no. 2, daughter of Mr. Dilip Paul got married to Suman Kar (son of the petitioners) on 13.12.2013 at Kolkata. Suman Kar is a citizen of United Kingdom (for short UK) and his parental house is at 14/3/1, Sribash Dutta Lane, Panchanantala Road, P.O. Panchanantala, P.S. Howrah,

Howrah 711101 where his parents resided. Only after five (5) days of marriage the husband of opposite party no. 2 left for U.K. Since then upto December, 2014 opposite party no. 2 was in touch with her husband by means of text messages, phone calls and e-mails. She was living with her in-laws in her matrimonial home without her husband during this period. In between opposite party no. 2 never met her husband in person. Her husband did not even try to arrange a tourist visa for opposite party no. 2 and stopped all forms of communication with her since August, 2015. The husband of the opposite party no. 2 never made an honest effort so that she gets the visa to U.K. to live with him. In fact, he allegedly supplied in sufficient papers/documents required for the same and tried his level best so that opposite party no. 2 does not get the visa. On August, 2015 when she finally got the visa on her third attempt she received an e-mail from her husband that he had spoken to immigration authorities and to the embassy in U.K. to cancel her visa and asked her not to board the flight clarifying the fact that he did not want to take any responsibility of her in U.K. anymore. In the mean time, the petitioners herein in furtherance of their common intention subjected the opposite party no. 2 to immense mental and physical torture even to the extent of pushing the opposite party no. 2 towards staircase causing grievous hurt to opposite party no. 2. Eventually, on 22nd of August, 2015 petitioners herein forced her to leave her matrimonial home by physically abusing her in front of their relatives. Driven by such misery and finding no alternative she filed a case being A.C. Case no. 3705 of 2016 in the Court of Ld. Judicial Magistrate, 4th Court, Alipore for maintenance and obtained an ex-parte order for maintenance on 23rd December, 2016. After receiving this Court order the husband of opposite party no. 2 sent a divorce notice from UK where eventually he managed to obtain a decree of divorce. After realizing the fact that her husband was not at all interested in any sort of reconciliation she finally decided to lodge a complaint in Netaji Nagar Police Station on 25.04.2017 on the basis of which FIR being no. 134 was lodged on 26.04.2017 and as a sequel, case has been initiated for which the instant petitioners have filed the instant revisional application.

3. Ld. Counsel, Mr. Jayanta Narayan Chatterjee, appearing on behalf of the petitioners has contended that all the allegation made in the complaint are omnibus in nature not substantiated by the attending facts and circumstances of this case. Mr. Chatterjee has submitted that the complaint in connection with this case was lodged with an ulterior motive for wreaking vengeance on the petitioners, only on receipt of divorce notice on 22.03.2017 while she left the house of the petitioner on 13.09.2015 along with her all belongings voluntarily leaving a declaration made by her.

4. Mr. Chatterjee has strenuously contended that the op 2 filed this complaint against the petitioners who are octogenarian. Had there been any allegation of torture caused upon her at the instance of the petitioners, according to Mr. Chatterjee, opposite party no.2 would have filed complaint before the Police soon after her leaving matrimonial home voluntarily.

5. In support of his contention, Mr. Chatterjee, relied on the following cases in order to substantiate his argument:-

- Priti Gupta & Anr. V. State of Jharkhand & Anr. reported in (2010) 7 SCC 667
- Gita Mehrotra & Anr. V. State of U.p. & Anr. reported in (2012) 10 SCC 741
- Arnesh Kumar V. State of Bihar & Anr. reported in (2014) 8 SCC 273
- Rajesh Sharma & Ors. V. State of U.P. & Anr. reported in (2018) 10 SCC 472
- K. Subba Rao V. The State of Telengana reported in (2018) 14 SCC 452
- Debasish Chandra Roy V. State of West Bengal & Anr. reported in C.R.R. 2812 – 2815
- Riju Roy & Ors. V. The State of West Bengal & Anr. reported in C.R.R. 1339 of 2020
- Kahkashan Kaushar @ Sonam & Ors. V. State of Bihar and Ors. reported in (2022) 6 SCC 599
- Ramesh Chandra Gupta V. State of Uttar Pradesh & Ors. reported in (2022) SCC Online SC 1634
- Rashmi Chopra V. State of U.P. reported in (2019) 15 SCC 357

6. In reply. Ld. Counsel, Ms. Malabika Roy Dey, appearing on behalf of the opposite party no. 2 has submitted that there is sufficient allegation in the written complaint against the petitioners who subjected her to mental and physical torture by not cooperating her to go and reside her husband in UK and also by causing hurt to the opposite party no. 2 for which she had to undergo medication as per report annexed in with affidavit in opposition marked as R2.

7. It is further contended by Ms. Roy Dey that declaration dated 13.09.2015 does not necessarily clarify that she voluntarily left her matrimonial home with all her valuables. But, it is not disputed that written complaint was lodged before the Police after getting notice of divorce notice petition filed by her husband.

8. In support of her contention, Ms. Roy Dey, has referred to the following cases:-

- Amit Kapoor V. Ramesh Chander and another reported in (2012) 9 SCC 460
- Supriya Jain V. State of Haryana and another in SLP (Crl) no. 3662 of 2023 (non-reportable)

9. Ld. Counsel, Mr. Bidyut Kumar Ray, appearing on behalf of the State, has supported the argument advanced on behalf of the opposite party no. 2 contending, inter alia, that sufficient evidence was collected during investigation.

Analysis:-

10. It was alleged in the written complaint that petitioner was subjected to mental and physical torture at the instance of old aged parent in-laws and the complaint was lodged before Netaji Nagar Police Station on 25.04.2017, admittedly on receipt of a notice of divorce application filed by her husband in UK that too by the advice of Ministry of Overseas Indian Affairs.

11. Ms. Roy Dey, referring to a prescription dated 30.07.2015, tried to convince this Court that opposite party no. 2 was subjected to physical torture at the behest of the petitioners. But, on careful scrutiny of the medical prescription along with the statement of that particular Doctor recoded under section 161 of the Code of Criminal Procedure. I find hardly any proximity between the alleged torture and the medical prescription.

12. The execution of the declaration dated 13.09.2015 made by opposite party no. 2 is not disputed either by the written complaint or in course of argument. Ms. Roy Dey has contended that the opposite party no. 2 was compelled to make the declaration dated 13.09.2015.

13. I am sorry to subscribe to this view on the ground of no subsequent action taken by the opposite party no. 2 after giving declaration under any compulsion.

14. I am astounded with the fact that though opposite party no. 2 was driven out from her matrimonial home on 22.08.2015 but she made a declaration on 30.09.2015 as follows:-

" ... That some dispute and differences between us and as it is not possible to live as husband and wife. Therefore, I voluntary received the following articles, goods and ornaments etc. ..."

15. Reasons assigned in the subsequent declaration cannot be said to substantiate the allegation of torture made in the written complaint lodged after long two years. Though, opposite party no. 2 narrated all the incident of mental and physical torture at the instance of her parent in-laws since after few days of marriage in the year 2013 but she never lodged any complaint before the Police.

16. In Amit Kapoor (supra) Hon'ble Apex Court reiterated the settled principle of law relating to determination of the scope of the powers exercisable by the High Courts under Section 482 of the CrPC and observed The High Courts should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge. It was further held that the Courts have to observe significant caution and not examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in conviction. Quashing of charge is in exception to the rule of continuous prosecution. Court should be more inclined to permit continuation of prosecution rather than its quashing at the initial stage. Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

17. In *Supriya Jain (supra)* this observation of the Hon'ble Apex Court was upheld.

18. The ratio of the cases relied on behalf of the petitioners focused on the ratio of *State of Haryana and other Vs. Bhajan Lal* reported in AIR 1992 SC 604 wherein Hon'ble Apex Court laid down parameters for exercising inherent power under Section 482 of CrPC as follows:-

" 102. 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 under Section 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 FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(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 FIR 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 under Section 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.”

19. All the parameters set out in Bhajan Lal (supra) have consistently been followed in all recent judgements of the Hon’ble Apex Court in dealing with matters of identical nature.

20. Parameter no. 3 clearly extended a space for consideration of allegation made in the complaint and also evidence collected in support of the same for exercising inherent jurisdiction under Section 482 of CrPC.

21. From what I have discussed earlier it appears to me that opposite party no. 2 never thought of any complaint to be lodged before the Police even after she was subjected to continuous mental and physical torture for more than three years and she lodged complaint only after receiving a notice of divorce petition that too against her aged parent in-laws.

22. The present case, in my view, is fully covered by parameters no. 3,5 & 7, as enumerated in Bhajan Lal (supra).

23. I make it clear that the observation which has been made hereinabove are restricted to the petitioners only and Ld. Trial Judge should not be influenced by the observation made above in proceeding with the A.G.R No. 2055/2017 qua the rest accused.

24. With the aforesaid observation the proceeding in connection with A.G.R. No. 2055/2017 pending before the Ld. ACJM, Alipore stands quashed against the petitioners namely Tushar Kanti Kar, son of late Birendranath Kar and Anjusri Kar, wife of Tushar Kanti Kar.

25. Accordingly criminal revision being no. CRR 1405 of 2018 stands allowed on contest.

26. Pending applications, if there be any, stand disposed of accordingly.

27. Case diary be returned.

28. Interim order, if there be any, stands vacated.

29. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

30. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.