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(2015) 12 CAL CK 0042

In the Calcutta High Court

Case No : Criminal Revision No. 2709 of 2015

Vijay Laxmi Daga — APPELLANT

Vs

The State of West Bengal and Others — RESPONDENT

Date of Decision : 03-12-2015

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 173, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 34, 406, 498A

Citation : (2015) 12 CAL CK 0042

Hon'ble Judges : R.K. Bag, J.

Bench : Single Bench

Advocate : Sandipan Ganguly, Arkadeb Bhattacharya and Upendra Roy, for the Appellant; Imran Ali, for the Respondent

Final Decision : Disposed Off

Judgement

R.K. Bag, J.—The petitioner has preferred this revision under Section 482 of the Code of Criminal Procedure praying for quashing the proceeding of G.R. No. 1633 of 2014 arising out of Jorabagan Police Station Case No. 125 dated June 11, 2014 under Sections 498A /406 /34 of the Indian Penal Code pending before the court of learned Metropolitan Magistrate, 17th Court, Calcutta.

2. The backdrop of the present revisional application is as follows: On June 11, 2014, the opposite party No. 2 filed a written complaint before the Officer-in-Charge of Jorabagan Police Station and on the basis of the said written complaint, Jorabagan Police Station Case No. 125 dated June 11, 2014 was started under Sections 498A /406 /34 of the Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act. The contents of the written complaint treated as FIR disclose that the opposite party No. 2 was married to one Avinash Daga, brother of the petitioner on February 4, 2014 according to Hindu rites and religion. The opposite party No. 2 started living in the matrimonial home along with her husband and mother-in-law. One married sister-

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in-law and her husband used to visit the matrimonial home almost every week. The present petitioner, being the married sister-in-law and her husband are staying abroad in United States of America. It is alleged that the husband misbehaved with the opposite party No. 2 during their honeymoon trip in Kerala and the husband made an attempt to kill the opposite party No. 2 in the hotel room at Kovalum beach. It is further alleged that the husband, married sister-in-law and her husband used to drink liquor in the evening at the week end in the matrimonial home and they used to force the opposite party No. 2 to join them for dancing. The further allegation is that the husband, mother-in-law and the sisters-in-law demanded for more money from the opposite party No. 2 for purchasing a flat at Mumbai. It is also alleged that the opposite party No. 2 was not given sufficient food and she had to perform all household duties apart from attending her office. The opposite party No. 2 alleged that she had to sign on some blank papers on the basis of the instruction of her husband, mother-in-law, sisters-in-law and their husbands. The further allegation of the opposite party No. 2 is that the gold ornaments and other articles gifted to her at the time of the marriage were kept in the custody of her mother-in-law who refused to hand over those articles to the opposite party No. 2 on demand.

3. The police investigated the criminal case and submitted charge-sheet against the husband, mother-in-law, two married sisters and the husbands of two married sisters on March 14, 2015 for commission of the offences under Sections 498A /406 /34 of the Indian Penal Code. The petitioner is the married sister-in-law of the opposite party No. 2 who is residing with her husband in the United States of America. The petitioner has prayed for quashing the criminal proceeding against her on the ground that no offence is made out against her from the written complaint treated as F.I.R.

4. Mr. Sandipan Ganguly, learned counsel appearing on behalf of the petitioner contends that there is no iota of allegation against the present petitioner except that she instigated the husband who subjected the opposite party No. 2 to cruelty. Mr. Ganguly has relied on three decisions of the Supreme Court reported in Ramesh and Others Vs. State of Tamil Nadu, , Geeta Mehrotra and Another Vs. State of U.P. and Another, and Preeti Gupta and Another Vs. State of Jharkhand and Another, in support of his contention that mere allegation of instigating the husband to inflict torture cannot be a ground to prosecute the married sister-in-law for the offence under Section 498A of the Indian Penal Code. Mr. Ganguly also submits that the casual reference of the name of the petitioner in the FIR without allegation of her active involvement cannot be the basis for continuation of the criminal proceeding against the petitioner. In Ramesh and Others Vs. State of Tamil Nadu, the criminal proceeding was quashed against the married sister-in-law who used to insult and make derogatory remarks against the victim-wife and who used to behave very rudely with her. The Supreme Court has specifically stated in paragraph 6 of the said Report as follows:

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"...At the most, the allegations reveal that her sister-in-law Gowri was insulting and making derogatory remarks against her and behaving very rudely against her. Even acts of abetment in connection with unlawful demand for property/ dowry are not alleged against her. The bald allegations made against her sister-in-law seem to suggest the anxiety of the informant to rope in as many of the husband''s relations as possible. Neither the FIR nor the charge-sheet furnished the legal basis to the Magistrate to take cognizance of the offences alleged against the appellant Gowri Ramaswamy. The High Court ought not to have relegated her to the ordeal of trial. Accordingly, the proceedings against the appellant Gowri Ramaswamy are hereby quashed and her appeal stands allowed."

5. In Geeta Mehrotra and Another Vs. State of U.P. and Another, , it is held by the Supreme Court that the casual reference of the names in the FIR without allegation of active involvement in the matter cannot be the basis for taking cognizance by learned Magistrate overlooking the fact that there is a tendency to involve the entire family members of the husband in the domestic quarrel. It is relevant to quote from paragraph 20 of the Report, which is as follows :

"20. Coming to the facts of this case, when the contents of the FIR are perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names which have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding."

6. In Preeti Gupta and Another Vs. State of Jharkhand and Another, the appellants being the unmarried brother-in-law and married sister-in-law were residing in Gujarat and Maharashtra respectively. No specific allegation was made against the said appellants and as such the criminal proceeding against the said appellants was quashed without compelling them to undergo the rigmarole of the criminal trial.

7. Mr. Imran Ali, learned counsel appearing on behalf of the opposite party/State submits that the opposite party No. 2 has not made any specific allegation against the present petitioner in her statement under Section 164 of the Code of Criminal Procedure, though other witnesses have made casual reference of instigating the husband of the opposite party No. 2 for inflicting torture on the opposite party No. 2 by the husband.

8. Mr. Sudipto Moitra, learned counsel appearing on behalf of the opposite party No. 2 contends that the petitioner has challenged only the FIR and not the charge-sheet which is submitted by the Investigating Agency before the court of learned Magistrate. Mr. Moitra further submits that this Court cannot invoke the inherent power under Section 482 of the Code of Criminal Procedure for quashing

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the criminal proceeding after submission of the charge-sheet by the Investigating Agency. Mr. Moitra has relied on the decision of the Supreme Court in State of Bihar and Another Vs. P.P. Sharma, IAS and Another, in support of his above contention. It is held in paragraph 33 of the said report that at a stage when the police report under Section 173 of the Code of Criminal Procedure has been forwarded to the Magistrate after completion of the investigation and the material collected by the investigating officer is under the gaze of judicial scrutiny, the High Court would do well to discipline itself not to undertake quashing of the proceedings at that stage in exercise of its inherent jurisdiction. The above observation was made by the Supreme Court because the High Court intervened at a stage when the learned Special Judge was seized of the matter and he had heard the arguments on the question of cognizance and had reserved the orders. The Supreme Court has held in paragraph 31 of the said Report that the High Court did not even permit the Special Judge to pronounce the orders. In the instant case, learned Magistrate has not yet considered the police report filed under Section 173 of the Code of Criminal Procedure for the purpose of framing of charge against the petitioner and other co-accused persons. So, the facts of the present case are clearly distinguishable from the facts of the case reported in State of Bihar and Another Vs. P.P. Sharma, IAS and Another, and as such the ratio of the said Report will not be applicable in the facts of the present case.

9. Relying on the decision of the Supreme Court in Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, Mr. Moitra submits that the Supreme Court has laid down the criteria for framing of the charge. In the present revision, the petitioner has prayed for quashing the criminal proceeding on the ground that no offence is made out against the petitioner. So, this Report is not relevant for the purpose of deciding the issue involved in this revision.

10. Lastly, relying on the decision of State of Madhya Pradesh Vs. Surendra Kori, Mr. Moitra argues that this Court cannot invoke inherent power to quash the criminal proceeding as the petitioner has not challenged the charge-sheet filed by the investigating officer before the court of learned Magistrate. This Report lays down the proposition of law for invoking inherent power during the course of investigation of the criminal case, because the evidence is yet to be collected in course of investigation of a criminal case. This Report is also not relevant to decide the issue involved in this revision, as I find that the petitioner has challenged the entire criminal proceeding pending before the court of learned Magistrate and the said proceeding includes submission of charge-sheet by the investigating agency.

11. On perusal of the written complaint treated as FIR, I find that the opposite party No. 2 has made casual reference of the name of the present petitioner without allegation of her active involvement in the domestic quarrel alleged by the opposite party No. 2. Admittedly, the opposite party No. 2 is residing with her husband in the United States of America. There is no specific averment in the

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written complaint treated as FIR that the petitioner visited the matrimonial home of the opposite party No. 2 at any material point of time when the opposite party No. 2 was subjected to cruelty by the husband, mother-in-law and another married sister-in-law and her husband. I have perused the statement of the opposite party No. 2 recorded under Section 164 of the Code of Criminal Procedure and the statement of the other witnesses like Deo Kishan Nathani, Kusum Poddar and Akshya Kumar Daga recorded under Section 161 of the Code of Criminal Procedure. On perusal of the said statements of the witnesses and the statement of the opposite party No. 2, I do not find any specific allegation of active involvement of the petitioner in subjecting the opposite party No. 2 to cruelty by her husband and other relatives of the husband. In the absence of any specific allegation of involvement of the present petitioner in subjecting the opposite party No. 2 to cruelty, I am of the considered view that it would be unfair to compel the petitioner to undergo the rigmarole of the criminal trial. My view gets support from the decision of the Supreme Court in Geeta Mehrotra and Another Vs. State of U.P. and Another, , Ramesh and Others Vs. State of Tamil Nadu, and Preeti Gupta and Another Vs. State of Jharkhand and Another, .

12. In view of my above findings, criminal proceeding of G.R. No. 1633 of 2014 pending before the court of learned Judicial Magistrate, 17th Court, Calcutta is quashed so far as the present petitioner is concerned by invoking my inherent power under Section 482 of the Code of Criminal Procedure. Learned Magistrate will proceed against the other accused persons in connection with G.R. No. 1633 of 2014 in accordance with the law.

Criminal revision is, thus, disposed of.

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