

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 843 of 2020

Mithu Dash @ Bhuiya

Vs.

State of West Bengal & Anr.

For the petitioner : Mr. Sanat Kumar Das,
Mr. Satadru Lahiri,
Mr. Safdar Azam.

For the State : Mr. Subham Bhakat.

For the Opposite Party No.2 : Mr. Manas Kumar Das,
Mr. Aritra Kumar Talukder.

Heard on : 12.07.2023

Judgment on : 01.08.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding being A.C. No.4119/19 under Sections 420/406/467/468/471/120B/34 of the Indian Penal Code, 1860 presently pending before the learned Judicial Magistrate, 7th Court, Alipore, South 24 Parganas and all orders including order dated 30th July, 2019 therein.

2. The petitioner's case is that she is the wife of Siddhartha Bhuiya, (hereinafter referred to as 'Complainant/Opposite Party') and the marriage

between the couple was solemnized in the year of 1999. Due to tremendous torture since marriage it became impossible for her to tolerate any further and ultimately on or about 14th May, 2019 (after 29 years), she was compelled to lodge a complaint with the Officer-in-Charge, Lake Police Station, registered as Lake Police Station Case No.78/19 dated **14th May, 2019** for investigation, against the complainant/opposite party for commission of offences punishable under Sections 498A/323/324/506 of the Indian Penal Code, 1860.

3. It is stated that as a counter blast to Lake Police Station Case No.78/19 dated 14th May, 2019, the complainant/opposite party/husband initiated the instant complaint case being A.C. No.4119/19 under Section 200 of the Code of Criminal Procedure, 1973 on 22.07.2019 before the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas against the accused/petitioner and others for commission of the alleged offences punishable under Sections 420/468/471/120B/34 of the Indian Penal Code, 1860. The mala fide of the complainant/opposite party will be palpable from the fact that he initiated the impugned criminal proceeding purposely suppressing his relation with the accused no.2 (his mother-in-law).

4. The complainant/opposite party by misusing his status as a Practising Advocate of Alipore Court, started filing false and fabricated criminal cases against the accused/petitioner and others with mischievous intention.

5. Besides the instant case, pursuant to an application under Section 156(3) of the Code of Criminal Procedure, 1973 preferred by the

complainant/opposite party before the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas **on 6th July, 2019** a specific case being Canning Police Station Case No.367/19 dated 12th July, 2019 has also been registered for investigation under Sections 323/420/506/34 of the Indian Penal Code, 1860 against the accused/petitioner and others.

6. On the same day, the complainant/petitioner preferred another application under Section 156(3) of Code of Criminal Procedure, 1973. On the basis of said application, another criminal prosecution, being Canning Police Station Case No.368/19 dated 12th July, 2019 has also been registered for investigation under Sections 406/34 of the Indian Penal Code, 1860 against the accused/petitioner and others.

7. On or about 5th September, 2019, the complainant/opposite party preferred an application under Section 125 of the Code of Criminal Procedure, 1973 being ACM/786/19 before the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas, praying for maintenance from the accused/petitioner. All of a sudden on 19th December, 2019, the complainant/opposite party withdrew the said maintenance proceeding.

8. On or about 9th September, 2019 the accused/petitioner preferred an application under Section 27 of the Special Marriage Act, 1954, praying for dissolution of the marriage between the parties. The said proceeding is still sub-judice before the Learned District Judge, Alipore.

9. The allegations in the present case is to the effect that:-

*The marriage between the accused/petitioner and the complainant/opposite party was solemnized **in the year 1999** according to the Hindu Rites and Customs. From the said wedlock, a male child was born on 6th November, 2001 at Medical College & Hospital. That due to some*

misunderstanding and difference of opinion, the relation between the accused/petitioner and the complainant/opposite party worsened day by day and the accused/petitioner then voluntarily left her matrimonial home on 1st June, 2013 along with her minor son.

10. After being aware of so many criminal prosecution pending against her, she tried to engage an Advocate on her behalf from the Bar Association of the court of learned Chief Judicial Magistrate, Alipore, 24 Parganas (South). Many lawyers refused to conduct the case of the accused/petitioner against the complainant/opposite party, since he is a practising Advocate of Magistrates' Court at Alipore and a member of the Bar Association of the said court.

11. In connection with Canning Police Station Case No.368/19 dated 12th July, 2019, the complainant/opposite party also preferred an application, praying for cancellation of bail granted to the accused/petitioner, which is still pending.

12. During the end of December, 2019, the learned Advocate who was appearing for the accused/petitioner expressed his unwillingness to represent the accused/petitioner any further, in any of the proceedings and thereby retired from the said cases. The said learned Advocate also returned all the case related papers and documents to the accused/petitioner. At that juncture, it became literally impossible for the accused/petitioner to find any advocate to represent her in the said proceedings, pending between the parties.

13. Ultimately, on or about 7th January, 2020, she had to appear in person before the learned Additional Chief Judicial Magistrate, Alipore, 24 Parganas (South) in connection with Canning Police Station Case

No.368/19 dated 12th July, 2019 and submitted a petition, praying for a month time to engage a new advocate.

14. The learned Magistrate while passing the impugned order dated 30th July, 2019, issued a search warrant for the search/recovery of personal articles from the premises of the accused/petitioner, and thereby erred in law and fact, as in the petition of complaint, there is no allegation that the accused/petitioner has custody of any article, belonging to the complainant/opposite party.

15. Mr. Sanat Kumar Das, learned counsel for the petitioner has submitted that further continuance of the aforesaid proceeding is a glaring example of the abuse of the process of court, as the order of cognizance taken by the learned Additional Chief Judicial Magistrate, Alipore, 24 Parganas (South) suffers from non application of mind.

16. That the discretion available to the learned Magistrate under Section 204 of Code of Criminal Procedure, 1973 is a judicial discretion and the same has to be exercised in a judicious manner and not in an arbitrary manner as has been done in the instant case.

17. That the impugned proceeding as well as all orders passed in connection with the impugned proceeding being bad in law are liable to be quashed and/or set aside.

18. The petitioner has relied upon the judgment of the Supreme Court in **Anupriya Pal & Ors. vs State of Uttar Pradesh & Anr. reported in (2019) 14 SCC 643**, held:-

“3. On 1-12-2008, on account of harassment by Respondent 2 and demands for dowry, Appellant 1 made a complaint before the Family Conciliation Centre, Police

Station at Betul, Madhya Pradesh. Respondent 2 appeared before the Conciliation Centre and assured Appellant 1 that he would not harass her and hence Appellant 1 agreed to reside in her matrimonial house. On 11-7-2009, Appellant 2 came to Bagpat and lodged a written complaint against Respondent 2 and his family members. On 18-7-2009 and 1-8-2009, Appellant 1 made complaints to the Conciliation Centre against Respondent 2 once again for ill-treating and harassing her. However, Appellant 1 gave birth to their second child during the interregnum. On 5-6-2011, Appellant 1 moved to her parents' house and filed a maintenance petition under Section 125 of the Code of Criminal Procedure before the First Class Magistrate, Betul, seeking Rs 35,000 as monthly maintenance from Respondent 2. Only thereafter, as a counterblast, Respondent 2 filed first information report against the appellants before Police Station Murad Nagar for the offence of cheating and intentional insult with intent to provoke breach of the peace i.e. for offences punishable under Sections 420 and 504 of the Penal Code, 1860.

4. On 2-12-2011, Appellant 1 lodged an FIR under Section 498-A IPC and under the Protection of Women from Domestic Violence Act, 2005, at Police Station Ganz Chowki, Betul and the proceedings are stated to have been pending. On 3-7-2012, the learned ACJM, Ghaziabad issued summons for trial of the accused (appellants herein) for the offences punishable under Sections 420 and 504 IPC based on the complaint lodged by Respondent 2 in Complaint Case No. 6714 of 2011. The appellants filed a petition under Section 482 CrPC before the High Court seeking quashing of proceedings which came to be dismissed by the impugned order.

6. Appellant 1 is the daughter of Appellants 2 and 3, and sister of Appellant 4. Appellant 5 is a relative of the other appellants. At the outset, we may mention that the first information report lodged by Respondent 2 herein does not whisper anything against Appellants 4 and 5. However, it merely makes a mention of Appellants 1 to 3. The major allegation of Respondent 2 is that though Appellant 1 was not qualified with an MCA at the time of marriage, it was wrongly represented by the appellants that she had completed her MCA. Except this allegation, no other allegation is found against the appellants in the first information report. Curiously, the Additional CJM issued process based on such contention of Respondent 2 against all the appellants for the offences punishable under Sections 420 and 504 IPC.

8. This is a classic case of taking revenge by the husband against the wife since he was aggrieved by

the action of the wife moving an application seeking maintenance. Absolutely no allegation which could fit in for the offence under Section 420 IPC is found in the first information report lodged by Respondent 2. Since the first information of Respondent 2 appears to be a counterblast to the maintenance proceeding initiated by the wife against her husband, these proceedings are liable to be quashed. Accordingly, this petition is allowed and the order dated 31-1-2017 [Anupriya Pal v. State of U.P., 2017 SCC OnLine All 2831] passed by the High Court is set aside. The proceedings in Complaint Case No. 6714 of 2011 pending before the Additional CJM Court, Ghaziabad are hereby quashed.”

19. Mr. Manas Kumar Das, learned counsel for the opposite party no.2 has submitted that there is sufficient materials on record against the petitioner to proceed towards trial, and as such the revision is liable to be dismissed.

20. The case of the complainant/opposite party no. 1, husband against the petitioner herein (wife) in the petition of complaint is as follows:-

“That due to misunderstanding and difference of opinion and without any reason, the accused no.1 (petitioner herein) voluntarily left her in laws house on 14.05.2018 with one piece gold Bala weighing about 2 Bhari valued at Rs.60,000/- and one Loha covered with gold valued at Rs.50,000/- weighing about 1 Bhari 8 gram and two pieces Pala covered with gold valued at Rs.30,000/- weighing about 1 Bhari and one pair Sankhabadhana Churi covered with gold valued at Rs.30,000/-weighing about Bhari and tactfully tagged two mobile phone, one I. Phone 7 Plus valued of Rs.47,000/- and one Vivo Phone valued of Rs.13,000/- purchased from South City Mall and one gents gold chain weighing about 1 Bhari valued of Rs.30,000/- and one Necklace weighing about 1.5 Bhari valued at Rs.50,000/-. The accused no.1/petitioner in collusion and in conspiracy with the accused no.2, wrongfully detained the said gold ornaments and mobile in her custody and the opposite/husband repeatedly requested for return of those articles. But both the accused persons became furious and abused the

opposite party/husband in most filthy language, physically and over telephone. The opposite party/husband having no other alternative, informed the matter to the concerned P.S. and lodged a General Diary being No.1089 dated 26.06.2019 and also a written complaint addressed to the O/C, Canning P.S on 26.06.2019. He also informed the matter in writing to the S.P, Banipur Police District on 27.06.2019 stating the all facts and circumstances, but the Police did not take any step against the accused persons.”

21. From the materials on record, it appears that the petitioner allegedly left her matrimonial home after 29 years of marriage with:-

- i. One piece gold Bala (bangle) (marriage ornament), worn as a sign of a married woman.*
- ii. One Loha covered with gold (marriage ornament), also worn as a sign of a married woman.*
- iii. Two piece (one pair) (red) pola, covered with gold (marriage ornament), also worn as a sign of a married woman.*
- iv. One pair Sankhabadhano churi covered with gold (marriage ornament).*
- v. Two mobile phones.*
- vi. One Gold chain (gents), she has taken her son with her.*
- vii. One necklace.*

These ornaments/accessories as described, are worn on regular basis by a traditional Bengali married woman, who chooses to wear them. The phones which might be for her own use and the ornaments as described, cannot be the basis of a criminal case between a married couple, that too, after 29 years of marriage.

Further allegation is that the complainant was allegedly abused in filthy language by the petitioner/accused persons.

22. These allegations, clearly do not make out any case as alleged under Sections 420/406/467/468/471/120B/34 of the Indian Penal Code against the petitioner and thus, this is a fit case where the inherent powers of this

court should be exercised for ends of justice, to prevent abuse of process of the law/court.

23. The revisional application being CRR 843 of 2020 is allowed.

24. The proceeding being A.C No.4119/19 under Sections 420/406/467/468/471/120B/34 of the Indian Penal Code, 1860 presently pending before the learned Judicial Magistrate, 7th Court, Alipore, South 24 Parganas as well as all orders including order dated 30th July, 2019, is quashed.

25. The petitioner (wife) is also informed that she can avail of legal aid including a legal aid counsel on approaching the respective legal services authority to conduct the proceedings on her behalf.

26. All connected applications, if any, stands disposed of.

27. Interim order, if any, stands vacated.

28. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

29. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)