

Criminal Revision

Present:

The Hon'ble Justice Ashim Kumar Roy

Judgment on 03.09.2010

*C.R.R. No. 1892 of 2010*

*Suvrangshu Deb Roy*

*versus*

*The State of West Bengal & Anr.*

Points:

**Charge Sheet-**In the absence of any specific allegation in the F.I.R. and/or evidence against the petitioner submission of charge sheet against the petitioner whether justified.-Code of Criminal Procedure, 1973 S.211

Facts:

Father of the victim wife lodged F.I.R alleging that although at the time of the marriage sufficient dowry was given as demanded by the present petitioner, who happened to be the brother-in-law of the victim wife and her husband and her mother-in-law, but despite that, her husband and mother-in-law tortured her on demand of further dowry and finally she was driven out from her matrimonial home. It appears from the First Information Report the subject of complaint has been referred to as ... "mental and physical torture on my daughter Mrs. Monjula Paul by her husband Subhasis Deb Roy, Deputy Manager, D.S.P." and lastly it was solicited that appropriate legal action be taken by the police against the complainant's son-in-law, i.e. the accused Subhasis Deb Roy and his mother Sandhya Deb Roy. Petitioner's prayer of discharge from the case was rejected by the learned court below.

Held:

Thus, in the FIR there is no allegation against the petitioner about torturing the daughter of the defacto-complainant on the demand of dowry, except that various articles and some amount of money were given at the time of marriage on the demand of the accused persons, including the present petitioner. Similarly, upon perusal of the statement of the witnesses, viz. the wife of the defacto-complainant Namita Paul and his son Biplab Paul, recorded under Section 161 of the Code of Criminal Procedure, I do not find any iota of allegations against the present petitioner that he either demanded dowry or on the failure to fulfill such demand he tortured the daughter of the defacto complainant.

Para 4

It appears the daughter of the defacto-complainant after marriage used to stay at Durgapur at the place of employment of her husband. In connection with this case police examined several witnesses, who were residing adjacent to their quarters, and according to the daughter of the defactocomplainant they were very much aware about the torture upon her but none has alleged anything against the present petitioner.

Para 7

In view of the aforesaid evidentiary materials on record, neither was it justified for submission of charge-sheet under Section 498A of the Indian Penal Code against the petitioner, nor the Court below was justified in rejecting the petitioner's prayer for discharge.

Para 9

For Petitioner : Mr. Biplab Mitra

Mr. Amajit De

For State : Mr. Kallol Mondal

For O.P. No. 2 : Mr. Biswa Ranjan Bhakat

The Court: Invoking Section 482 of the Code of Criminal Procedure, the petitioner, who has been charge-sheeted under Sections 498A/323/34 of the Indian Penal Code with two others, has approached this Court for quashing of the charge-sheet against him as well as challenged the order passed by the Court below rejecting his prayer for discharge.

2. Heard the learned Counsel appearing on behalf of the petitioner as well as the Learned Counsel appearing on behalf of the State and the learned advocate appearing on behalf of the defacto-complainant. Perused the Case Diary.

3. According to the Learned Counsel of the petitioner the impugned charge-sheet is liable to be quashed as far as the present petitioner is concerned, who happened to be the brother of the husband, on the following grounds;

(a) No prima facie case of the alleged offence has been made out against him.

(b) Taking the allegations made in the FIR as well as those appearing from the statement of the witnesses recorded under Section 161 of the Code, no offence has been made out against him.

(c) Permitting the aforesaid criminal proceeding to continue against him would bring out a situation which is completely an abuse of process of Court.

On the other hand, the prayer for quashing of the charge-sheet against the petitioner is vehemently opposed by the Learned Counsel of the State, who produced the Case Diary as well as by the Learned Counsel of the defacto complainant.

4. It appears from the First Information Report lodged by the father of the victim wife that although at the time of the marriage sufficient dowry was given by way of cash and kinds, viz., ornaments, utensils etc., over and

above Rs. 1.5 lakhs as demanded by the present petitioner, who happened to be the brother-in-law of the victim wife and her husband and her mother-in-law, but despite that, her husband and mother-in-law tortured her on demand of further dowry and finally she was driven out from her matrimonial home in the month of August, 2005. It was further alleged that thereafter the defacto-complainant having received such information about the physical torture perpetrated upon his daughter rushed to Guwahati where the matrimonial home of his daughter is situated and somehow or other convinced his daughter to stay at her matrimonial home. Thereafter, on July 29, 2006 the defacto-complainant dropped his daughter at the place of employment of his son-in-law at Durgapur and then with his wife returned to his son's house at Bokaro. Thereafter, on January 31, 2006 he received a telephonic message from her daughter that throughout on the previous night, she was physically tortured both by her husband and mother-in-law and they also tried to kill her. It would not be out of place to note that it appears from the First Information Report the subject of complaint has been referred to as ... "mental and physical torture on my daughter Mrs. Monjula Paul by her husband Subhasis Deb Roy, Deputy Manager, D.S.P." and lastly it was solicited that appropriate legal action be taken by the police against the complainant's son-in-law, i.e. the accused Subhasis Deb Roy and his mother Sandhya Deb Roy. Thus, in the FIR there is no allegation against the petitioner about torturing the daughter of the defacto-complainant on the demand of dowry, except that various articles and some amount of money were given at the time of marriage on the demand of the accused persons, including the present petitioner. Similarly, upon perusal of the statement of the witnesses, viz. the wife of the defacto-complainant Namita Paul and his son Biplab Paul, recorded under Section 161 of the Code of Criminal

Procedure, I do not find any iota of allegations against the present petitioner that he either demanded dowry or on the failure to fulfill such demand he tortured the daughter of the defactocomplainant.

5. Now, coming to the statement of the victim, i.e. the daughter of the defacto-complainant, I find after her marriage in April 2005 all the accused persons including the present petitioner tortured her on demand of further dowry and on August 2005 they finally drove her out from the quarter of his husband at Durgapur and she was compelled to take shelter at the quarter of one of his neighbour Mr. Babjee, when having received information about such incident, her father rushed to the spot and settled the dispute and she again started living with her husband. It was her further allegation that after some days the accused persons again started torturing her and when also she took shelter at the quarter of the said neighbour Mr. Babjee. It is also alleged that after marriage she had been to Guwahati, Assam and stayed there for four days, when she was tortured on demand of dowry by the present petitioner Suvrangshu Deb Roy and by her mother-in-law Sandhya Deb Roy. Besides that most of the other allegations were directed against her husband and the mother-in-law. I find from the Case Diary during the course of investigation police examined the said neighbour Mr. P.S. Babjee and his wife Mrs. Babjee, who were the resident of Durgapur and were residing at the adjacent quarter of the husband of the daughter of the defacto complainant. According to the said witnesses they had no personal knowledge about any torture perpetrated upon the daughter of the defacto-complainant by her husband on demand of dowry. The said witnesses categorically stated they never noticed any torture upon her. In addition to that Mr. Babjee further stated that the daughter of the defacto-complainant never disclosed to her that the accused persons used to torture her on

demand of further dowry. The police also examined another neighbour Mrs. Rita Juha, the said witness has also stated that she never heard from the daughter of the defacto-complainant that she was subjected to torture by her husband and mother-in-law on demand of dowry. According to her one day there was some quarrel between the husband and the wife when there was allegations and counter allegations against each other by both of them. Similar is the statement of one Mahitosh Singh and Smt. Malabika Singh, who are also the neighbours. According to them they never guessed that there was any dispute between the daughter of the defacto-complainant and her husband.

6. Be that as it may, having regards to the present petitioner, I find that according to the daughter of the defacto-complainant once, while she had been to Guwahati for four days she was subjected to torture by the present petitioner with others on demand of dowry. However, her such statement has received no support from her father, mother and brother.

7. It appears the daughter of the defacto-complainant after marriage used to stay at Durgapur at the place of employment of her husband. In connection with this case police examined several witnesses, who were residing adjacent to their quarters, and according to the daughter of the defactocomplainant they were very much aware about the torture upon her but none has alleged anything against the present petitioner.

8. The Learned advocate appearing on behalf of the defactocomplainant has not been able to point out anything to justify the submission of charge-sheet against him.

9. In view of the aforesaid evidentiary materials on record, neither was it justified for submission of charge-sheet under Section 498A of the Indian

Penal Code against the petitioner, nor the Court below was justified in rejecting the petitioner's prayer for discharge.

10. In the result the instant criminal revision succeeds and the impugned charge-sheet against the present petitioner as well as the order rejecting the petitioner's prayer for discharge both stands quashed.

11. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

*(Ashim Kumar Roy, J.)*