

## **Criminal Revision**

**PRESENT: The Hon'ble Justice Ashim Kumar Roy**

**Judgment On: 01-02-2010.**

**C.R.R. No. 4250 of 2009**

**Asmat Sk. & Ors.**

**versus**

**State of West Bengal & Anr.**

### **Point:**

**Quashing:** When the Court is confronting with the question of quashing of a criminal proceeding, whether there is no scope to determine which version of the case, either prosecution or defence, is true- Code of Criminal Procedure,1973-S.482.

**Fact:** Invoking Section 482 of the Code of Criminal Procedure, the petitioners moved this application for quashing of a charge-sheet under Sections 363/366/368/511/506 of the Indian Penal Code.

**Held:** When the Court is confronting with the question of quashing of a criminal proceeding, there is no scope to determine which version of the case is true whether the version of the prosecution or that of the defence, that can only be decided during the trial after recording of evidence. (Paragraph – 3)

For Petitioners : Mr. Dipanjan Chatterjee

Md. Moniruzzaman

For State : Mr. Sandipan Ganguly

**The Court: 1.** Invoking Section 482 of the Code of Criminal Procedure, the petitioners have moved this application for quashing of a charge-sheet relating to Khargram P.S. Case No. 75 of 2009 under Sections 363/366/368/511/506 of the Indian Penal Code.

2. Mr. Dipanjan Chatterjee, learned advocate, appeared on behalf of the petitioners submitted before this Court that Benura Khatun is the legally married wife of the petitioner no. 2. He further submitted since the parents and other members of the family of the Benura Khatun were against their marriage, they on 19th February, 2009 being accompanied by other anti-social elements of the locality forcibly entered into the house of the petitioners and took her away. Following the said incident a First Information Report was lodged at the Khargram P.S. whereupon Khargram P.S. Case No. 46/09 under Sections 448/363/366/323/506 of the Indian Penal Code was registered. He further

submitted after the said incident the accused of the aforesaid case, i.e., father of Benura Khatun moved an application invoking Section 156 (3) of the Code of Criminal Procedure before the Learned Additional Chief Judicial Magistrate, Kandi against the present petitioners alleging commission of offences punishable under Sections 363/368/511/506 of the Indian Penal Code for allegedly kidnapping her and pursuant to the order passed by the Learned Magistrate, Khargram P.S. Case No. 75 of 2009 under Sections 363/366/368/511/506 of the Indian Penal Code was registered. Mr. Chatterjee further submitted in the said First Information Report, it has been falsely alleged that the petitioners have kidnapped the Benura Khatun from the lawful custody of her guardian and, according to him, the police after investigation submitted charge-sheet without referring to the fact that prior to that the petitioners lodged a complaint against the complainant of the impugned case. He, therefore, submitted in view of such suppression of facts in the charge-sheet, the same is liable to be quashed.

On the other hand, Mr. Sandipan Ganguly, learned advocate, appeared on behalf of the State produced the Case Diary and submitted that sufficient materials have been collected by the police during investigation, as such, quashing of the impugned charge-sheet does not at all arise. He drew the attention of this Court to Annexure "P-1" to this criminal revisional application and submitted that on 30th January, 2009 the petitioner No. 2 and Benura Khatun were arrested by the police under Section 41 of the Code of Criminal Procedure read with Section 366 of the Indian Penal Code when they were found roaming in the street in the early morning of 30th January, 2009. He further submitted that it is the case of the defacto-complainant that she was eloped from his house by the accused persons on 28th January, 2009, i.e., two days before. He further drew the attention of this Court to an order passed on 6th March, 2009 in connection with W.P. No. 3266 (W) of 2009, a Habeas Corpus petition moved at the behest of the petitioner no. 2 on the allegation that his legally married wife Benura Khatun has been forcibly detained and confined by her parents in their custody.

Now, with reference to the said order Mr. Ganguly submitted that Benura Khatun was produced before this Court and she on being asked by the Court disclosed that she was never married to Jewel Sk. and the accused Jewel Sk. wanted to marry her forcibly, but she did not agree to that. Mr. Ganguly further submitted that Court was fully satisfied that Benura Khatun was quite alert and capable of giving answers rationally to the question put to her by the Court and finally Court found that there had been no prima facie proof of marriage.

3. The grounds on which the learned advocate of the petitioners sought for quashing of the charge-sheet are all disputed question of facts and same cannot be gone into at this stage. When the Court is confronting with the question of quashing of a criminal proceeding, there is no scope to determine

which version of the case is true whether the version of the prosecution or that of the defence, that can only be decided during the trial after recording of evidence. Moreover, it appears from the aforesaid order passed in connection with the Habeas Corpus proceeding that this Court upon examining the victim girl Benura Khatun personally found there was no prima facie proof of marriage and the petitioner no. 2 tried to forcibly marry her which of course goes against the petitioners.

For the reasons stated above, I do not find any merit in this criminal revision, thus, the question of quashing of impugned charge-sheet does not at all arise. Accordingly, this criminal revision stands dismissed.

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.* )