Somnath Roy and Another Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: Dec. 23, 2003

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 156(3), 468, 473, 482
Penal Code, 1860 (IPC) â€" Section 34, 406, 498A

Citation: (2004) 4 CHN 99

Hon'ble Judges: R.N. Sinha, J

Bench: Single Bench

Advocate: Bijoy Adhikary, Milan Mukherjee, for the Appellant; Abhijit Auddy, for the Respondent

Judgement

Rajendra Nath Sinha, J.
This is to consider an application u/s 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 at

the instance of the petitioners husband & mother-in-law being aggrieved by the order passed in G. R. Case No. 1060 of 1996 dated 31.8.99

passed by the learned Additional Chief Judicial Magistrate, Sealdah (Tangra P.S. case No. 80 dated 22.5.1996 under Sections 498A, 406 & 34

of the Indian Penal Code.

2. Being aggrieved by the taking cognizance of the offence beyond the period of limitation is the prime consideration for adjudication as has been

contended by the learned lawyer for the petitioner. The backdrop may be stated in brief that the parties were married by way of registration on

12.2.1995 with the stipulation that the petitioner/husband''s apartment is unfit for living with wife and one new flat at Motijhil Avenue which was

expected to be handed over to the husband by 31.3.1995. Thereafter as per mutual settlement the wife was to stay at her father''s place.

Thereafter a social function of the said marriage was held on 21.4.1995 and she had been to the marital home and boubhat was there on

23.4.1995 but the same was held at Utsav, 168, Sarat Bose Road, Calcutta. They both spent that nights on 23.4. and 24.4. boubhat day on her

father''s residence at Lake Road, Calcutta. On 24.4. the petitioner/husband left therefrom and again came back on 30.4.1995, spent the night

there but did not go afterwards. She was, however, taken to the marital home on 29.5.1995 after initial reluctance by the petitioner/accused and

his mother taken in till her stay there up to 4.6.1995. All sorts of mental torture were perpetrated on her and the petitioner and his mother forced

her to bring Rs. 50,000/- from her father for the purposes of making payments for the new flat and that Rs. 30,000/-was given for furniture etc. as

gifts were inadequate. During this stay she was not provided with normal food but served with rotten food and since then bid for reconciliation by

relations gone in vain she filed a petition before the learned CJM at Alipore on 19.4.1996 which was sent to P.S. u/s 156(3) Cr. PC received by

the respective P.S. and FIR was drawn on 22.5.1996 and after completion of investigation submitted chargesheet under the aforesaid sections

showing both the accused absconder on 31.8.1999. Learned Additional Chief Judicial Magistrate at Sealdah took cognizance of the offence and

issued warrant of arrest, hence the petition.

3. On behalf of the petitioner it has been contended by Mr. Milan Mukherjee, learned Advocate that on the face of it the cognizance taken by the

learned ACJM is bad keeping in view of section provided under chapter 36 of the Cr. PC and he has relied on the following reported decisions

namely :

1) 1999 Supreme Court Cases (Cri) 629, Arun Vyas and Anr. v. Anit Vyas.

2) 2001(3) Crimes 432, Ravi Dutta Sharma v. State of U.P. 3} 2003 C Cr LR (Cal) 639, Avhijit Sen v. State of W.B.

4. Mr. Bijoy Adhikary for the de facto complainant has urged that (a) if the de facto complainant is to suffer for no default of his own but for the

I.Os delay? In this respect he has further submitted that the I.O. Ms. Malaya Mojumdar herself was in the family way, thus, causing the delay, (b)

According to him the entire matter as to whether there was delay or not be decided in course of trial. Mr. Adhikary has fervently urged with all the

vehement in his command that keeping in view of nature of the offences under Sections 498A and 406 read with Section 34 such cruelty

perpetrated on the womanhood is to be dwelt strictly and mere technicality may not be allowed td stand in the way. Sri Adhikary has relied on the

reported decision namely:

a) 2003 Calcutta Criminal Law Reporters (Supreme Court) 752, Union of India v. Prakash Hinduja and Anr.

b) 1995 Calcutta Criminal Law Reporter (Supreme Court) 291, Ganesh Narayan Hegde v. S. Bangaruppa and Ors.

c) 2001 AIR SCW 795, Seeta Hemchandra Shashittal and Anr. v. State of Maharashtra and Ors.

d) Calcutta Law Times 97(1) H.C. 369, In Re: Chinta Devi and Ors. v. State.

5. Now let us proceed to discuss the respective contentions as to whether any cause sufficient enough to invoke the provision u/s 482 in the given

circumstances been made out or not and to take stock of the law reigning the field. The first case i.e. Union of India v. Prakash Hinduja and Anr.

(supra) is in respect of quashing of a chargesheet submitted by C.B.I, without reporting and taking approval or consent from the Central Vigilance

Commission was said to be illegal and no cognizance could be taken was accepted by the High Court while the Apex Court is of the view that the

petition ought to have been dismissed and it was laid down amongst others:

If cognizance is in fact taken on a police report initiated by the breach of a mandatory provision relating to investigation, there can be no doubt

that the result of the trial, which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a

miscarriage of justice and that an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court

for trial. That being the legal position, even assuming for the sake of argument that the CBI committed an error or irregularity in submitting the

chargesheet without the approval of CVC, the cognizance taken by the learned Special Judge on the basis of such a chargesheet could not be set

aside nor further proceedings in pursuance thereof could be quashed.

6. The aforesaid case is quite different in its own context and does not come in aid of the opposite party.

7. The second one is Ganesh Narayan Hegde v. S. Bangaruppa and Ors. It was held amongst others that this case determines the question as to

whether the second revision could be maintained in the interest of the inherent power and whether the Court would interfere with the delay caused

during the initial or interlocutory stages of the criminal cases. This case is also does not come in aid of the opposite party as the case was on a

complaint petition though under the warrant procedure.

8. The next case relied on is Seeta Hemchandra Shashittal and Anr. v. State of Makarashtra and Ors. (supra). It was held amongst others that

while considering the grounds of quashing the proceedings matters requiring obtaining of sanction from Government - delay in giving sanction

cannot be attributed to the Investigating Officer - and accordingly held that the chargesheet was not liable to be quashed on such grounds. In other

words that unavoidable delay and for no fault of the investigating agency itself such procedures i.e. seeking sanction and time taken for according

sanction is to be deducted while computing the period of limitation.

9. However, this ratio would have come in aid of the opposite party if it was so found that the delay was caused for any such similar

circumstances. The argument advanced that I.O. Malaya Mojumder was in the family way that laid to the delay of filing of chargesheet is of no

avail unless it is apparent from the four corners of the C.D. On perusal of the C.D., I do not find any such noting about taking Mrs. Malaya

Mojumder"s maternity leave and/or remaining absent from the duty. More so, three years time as has been prescribed by the act itself unless

explained will prevail,

10. The last case is - In Re : Chinta Devi and Ors. v. State. This Court has inter alia laid down that while exercising the inherent power u/s 482 its

object is to serve the ends of justice -- it is an extraordinary step --circumspection of the Court -- essential and it has further held that at the initial

stage it is not for this Court to decide the pros and cons of the chargesheet and statements recorded u/s 161. It is, of course, while in course of

investigation.

11. Sri Adhikari has in course of argument with much eloquence advanced the arguments about the perpetration of atrocities/cruelties on women

are rising day by day and the Courts must favourably lean towards the regularity and mere technicalities be not allowed to stand in the way. And

the Court can condone the delay for the sake of justice. Now, the question if it be sent back to learned Court below for considering the same?

12. In this score I am constrained to say that the Courts are second to none in vindicating the causes of women on whom atrocities/cruelties have

perpetrated and furthermore it is the prime duty of the Courts to see that the justice is done to the parties not only to the wife but also to the

husband as well. Mr. Mukherjee has placed reliance on Arun Vyas and Anr. v. Anit Vyas (supra) case wherein it has been held that in a belated

complaint under Sections 498A and 406 IPC discharge and legality was considered. It was also held inter alia that liberty -- interpretation of

Section 473 of the Criminal Procedure Code in a case of offence u/s 498A in favour of wife be raised, wherein the Apex Court sent the case to

the learned Magistrate to proceed with two questions of limitation after taking note of Section 473 Cr. PC in the light of the observation made and

the observation is in para 17 and it is reproduced below :

For the reasons stated above the High Court was not correct insofar as the order of the Magistrate relates to Section 406 I.P.C. But in regard to

the offence u/s 498A I.P.C. no exception can be taken to the impugned order under appeal as the learned Magistrate did not take note of Section

473 Cr. P. C. while order discharge of the appellants. Now the learned Magistrate shall consider the question of limitation taking note of Section

473 Cr. P. C. in the light of the observations made hereinabove. Accordingly the appeal is allowed in part.

13. Now let us proceed to scan the case in hand hereunder. The last date if it is taken that 4.6.1995, but quite after long time on 19.4.1996 the

machinery of law was set in motion. Though offence of cruelty u/s 498A is a continuing offence and on each occasion on which the wife was

subjected to cruelty would have a new starting point of limitation. The last act of cruelty was committed on the aforesaid date, but the machinery of

law set in motion only on 19.4. thereafter, Tangra P.S. Case No. 80 dated 22.5.1996 was the date when the case was registered under the

aforesaid sections and chargesheet filed on 31.8.1999.

14. The next case relied by Mr. Mukherjee is, 2003 Calcutta Criminal Law Report (Cal) 639 wherein it has been held amongst others that delay in

taking cognizance -- limitation for cognizance -- extension of the period of limitation in suitable cases -- it has got to be considered before taking

cognizance, i.e. in other words keeping in view of chapter 36 the legislature thought it fit to place the investigating agency on toes so that speedy

investigation and trial are possible. Now in the event of any delay in filing the chargesheet the causes of the same has to be explained and after

hearing the proposed causes in respect of condonation of the delay be considered. Now that the period of limitation prescribed in the aforesaid

offences is imprisonment for a term not exceeding three years. Thus u/s 468 it is three years.

15. However, in respect of the law and the submissions of the parties I have noted above, and on perusal of the entire materials collected in the

CD I find that the term ''cruelty'' has been defined in the section itself in its proviso and the statements of the witnesses collected and the

subsequent development of the filing of matrimonial suit by the wife I am of the view that it is a fit case where the provisions u/s 482 be invoked

and the proceeding be quashed accordingly. Before parting with the same another point came in course of my mind which was also referred in the

aforesaid case, 2003 Calcutta Criminal Law Reporter (Cal) 639, wherein the learned P.P. urged that as the accused has been shown to have been

an absconder in the chargesheet Section 470(4)(B) comes in aid of the prosecution. I am also unable to take this plea seriously as from the

certified copy as has been filed together with the original petition, I found that after recovery of some articles seized from the household of the

petitioner the accused appeared in Court and claimed return of some of the items seized as per seizure list dated 3.8.99. The learned Magistrate on

consideration of materials returned some articles on execution of a bond of Rs. 5000/-.

16. Thus I find that the accused were on record though, of course, it is nowhere claimed that they either surrender before the Court or so but they

appeared before the Court and within the four corners of the CD it is nowhere found that there was any attempt to find out the accused named in

the FIR. In the absence of the aforesaid material I am not inclined to take that aspect seriously.

17. I have gone through the entire materials and the statements of the witnesses and that of the wife/opposite party, her father and brother in

particular which go to show that initially the parties were married by way of registration with a stipulation that the wife will reside with her father as

the place where the petitioner was residing was not fit for dwelling with wife. The wife"s brother statement also goes to show that they were

residing in the Railway quarters and some dispute was there in connection with the possession of the same (since her father retired from service).

Thus, they thought it fit and prudent to send the sister to her marital home whereafter initial reluctant the petitioner and his mother took her in, the

husband and wife also attended an invitation of the wife"s uncle on a "jamai shasti day" but he left the wife behind.

18. On perusal of the entire materials collected with the four corners of the CD I do not find that the cruelty as defined in Section 6 itself has been

made out therefrom. Why the parties were not inclined to each other is a misery no doubt. But the factum as revealed does not come within the

definition "cruelty" as provided under the Section itself (vide CD running pages 20-28).

19. Thus I am not inclined to remit it back to consider it u/s 473; and part read with Section 470(4) Cr, PC.

20. The Apex Court in N. Narayan Das v. State of Karnataka, AIR SCW 6034, has laid down as many as 7 guidelines to be followed, while

dealing with one petition u/s 482 Cr. PC.

21. Here, in this instant case I find it comes within the purview of No. 3 of the aforesaid guideline, which is reproduced below :

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.

22. Keeping in view of the above the surrounding circumstances into consideration, more so when the parties are already before the matrimonial

Court, let them thrash out the "lis" pending in between them, they are still young in ages, sooner it is disposed of is better.

23. Accordingly the petition succeeds. Let the FIR together with the connected case & impugned order be quashed.

24. Let a copy of the order be sent down to the learned Court below.

25. Xerox certified copy of the judgment be made over to the parties as early as possible, if applied for.