

(2010) 10 CAL CK 0050

Calcutta High Court

Case No: C.R.R. 1174 of 2010

Sri Ashok Nandy Alias Alope
Nandy and Others

APPELLANT

Vs

The State of West Bengal and
Another

RESPONDENT

Date of Decision: Oct. 5, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 161, 173, 177, 239
- Penal Code, 1860 (IPC) - Section 34, 406, 494, 498, 498A

Hon'ble Judges: Syamal Kanti Chakrabarti, J

Bench: Single Bench

Advocate: H.K. De and Sandip Kundu, for the Appellant; Sk. Kasem Ali Ahmed, for State, Ashish Kr. Sanyal and Pratip Kr. Chatterjee for Opposite Party No. 2, for the Respondent

Judgement

Syamal Kanti Chakrabarti, J.

The present revisional application is directed for quashing the proceeding in connection with English Bazar P.S. case No. 566 of 2009 dated 28.08.2009 u/s 498A/34 of the Indian Penal Code corresponding to G.R. Case No. 2764 of 2009 now pending before the Learned Chief Judicial Magistrate, Malda.

2. The present three petitioners are parents-in-law and husband of the defacto complainant Smt. Arpita Ghosh (Nandy) who has lodged complaint against them for inflicting physical and mental torture upon her for extortion of dowry after her marriage on 04.03.2009 with the respondent No. 3, Samrat Nandy. On receipt of her complaint on 28.08.2009 the local PS started the above case in which charge sheet has been submitted u/s 498A/34 IPC against all the three accused persons. On receipt of the said charge sheet the Learned Chief Judicial Magistrate took cognisance on 29.12.2009 and issued warrant of arrest against all the three petitioners fixing 18.12.2010 for execution and return. The said proceedings has now been challenged on grounds of jurisdictional error and lack of prima facie case

against the present petitioners.

3. Learned lawyer for the petitioner has contended that from the petition of complaint it will appear that all the petitioners are permanent residents of 6, Baikuntha Ganguly Road, Sodepur, under P.S. Khardah, District - North 24 Parganas and in the FIR the allegation of torture upon the defacto complainant was made at her matrimonial house, i.e., at premises No. 6, Baikuntha Ganguly Road but the complaint was lodged before the Court of the Learned Chief Judicial Magistrate, Malda who had no jurisdiction to enquire or try the case which is contrary to the provisions of Section 177 Cr.P.C. Moreover, no prima facie case of alleged torture for extortion of dowry was made out in the petition of complaint though the Learned Chief Judicial Magistrate, Malda took cognizance of the offence which is equally abuse of the process of law which should be prevented. He has relied upon the principles laid down in the case of *Bhaskar Lal Sharma v. Monica* (2010) 2 C Cr LR (SC) 75 in support of his contention. In the said case (paragraph 62) the ratio of [Devendra and Others Vs. State of U.P. and Another](#), was relied upon. The principles enunciated in paragraph 26 of the said case is quoted below:

26. However, it is now well-settled that the High Court ordinarily would exercise its jurisdiction u/s 482 of the Code of Criminal Procedure if the allegations made in the First Information Report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the First Information Report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior Courts would not encourage harassment of a person in a criminal Court for nothing.

4. Learned lawyer for the state on the other hand has opposed the move and contended that since after taking cognizance IO has investigated into the case and filed charge sheet against all these petitioners u/s 498/34 IPC, at this stage the Court should not exercise its power u/s 482 Cr.P.C. and the points raised herein may be agitated before the Learned Trial Court at the time of consideration of charge. He has relied upon the principles laid down in the case of *K. Neelaveni v. State represented by Inspector of Police and Ors.* (2010)2 C Cr LR (SC) 108. The ratio of the aforesaid case contained in paragraph 11 is quoted below:

11. It is relevant here to state that offences under Sections 406, 494 and 498A are triable by a Magistrate, First Class and as all these offences are punishable with imprisonment for a term exceeding two years, the case has to be tried as a warrant case. The procedure for trial of warrant case by a Magistrate instituted on a police report is provided under Chapter XIX Part A of the Code of Criminal Procedure, 1973. Section 239 inter alia provides that if upon considering the police report and the document sent with it u/s 173 and making such examination, if any, of the accused and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing. It seems that the

accused persons even before the case had reached that stage filed an application for quashing of the charge sheet under Sections 406 and 494 of the Indian Penal Code. In our opinion, the High Court ought not to have interfered after the submission of the charge sheet and even before the Magistrate examining as to whether the accused persons deserved to be discharged in terms of Section 239 of the Code of Criminal Procedure.

Learned lawyer for the defacto complainant, i.e., the OP No. 2 herein has also supported the contention of the learned lawyer for the state and prayed for dismissal of the application.

5. I have carefully considered the rival contentions of both the parties, perused the petition of complaint and relevant case diary.

6. So far as the jurisdiction is concerned I find much substance in the contention of the learned lawyer for the petitioner. In the petition of complaint the defacto complainant has clearly stated that after her marriage with the petitioner No. 3 on 04.03.2009 she resided at her in-laws' house at premises No. 6, Baikuntha Ganguly Road, Sodepur, under P.S. Khardah, District - North 24 Parganas but soon after her marriage all the opposite parties used to inflict physical and mental torture upon her for extortion of dowry and abused her, her father and other members of her parental home in filthy languages. However, she stayed there for two and a half months and ultimately was compelled to leave her matrimonial house in the early part of June, 2009. On 19.07.2009 her husband came to her father's house and abused her in filthy language and also physically assaulted her. So she reported the incident to the local police station and ultimately was compelled to file the complaint from her parental house before the Learned Chief Judicial Magistrate, Malda.

7. The said complaint was ultimately treated as FIR u/s 156(3) Cr.P.C. on the basis of which investigation was made and charge sheet was submitted. From the recital of the petition of complaint, therefore, it appears that there was prima facie allegation of torture by the respondent No. 3 at the parental house of the defacto complainant at Khardah but there is no allegation of torture by two other petitioners i.e., parents-in-law of the defacto complainant within the jurisdiction of the Learned Chief Judicial Magistrate, Malda.

8. From a perusal of relevant case diary I also find that the witnesses examined in this case u/s 161 Cr.P.C. have not made any specific allegation of torture and quantum of dowry demand against the parents-in-law of the defacto complainant and particularly the statement of the neighbour Prasanta Ghosh clearly shows that the entire alleged incident did take place at the matrimonial home of the defacto complainant at Khardah. Some witnesses have stated that the accused persons threatened the defacto complainant and abused her parents over phone while she was staying at her paternal house at Malda.

9. In order to constitute an offence u/s 498A/IPC there should be sufficient materials to substantiate the contention of alleged physical and mental torture as claimed in the petition of complaint. In explanation (b) of Section 498A IPC "cruelty" has been defined as harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security is on account of failure by her or any person related to her to meet such demand. Keeping that point in view the allegation in the complaint should be consistent with normal human behaviour. It is alleged that the respondent and other in-laws of the complainant inflicted torture upon her for extortion of dowry and it was so intense that she was forced to leave her matrimonial home two and a half months after her marriage. Thereafter no sane husband will follow her at her parent's house and will again cause any injury to her person on demand of dowry. This is a mere abnormal conduct which cannot be the basis of any prosecution in isolation of other allegations made against them at her in-laws house. This is merely to imbibed the jurisdiction of the Court where the complaint was lodged with the full knowledge that the Court had no jurisdiction within the meaning of Section 177 Cr.P.C.

10. The real truth will be revealed from the penultimate paragraph of the petition of complaint wherein the complainant has stated that at present she is working as a lecturer of Sarada Ramkrishna Vivekananda Vidyapith under the University of Calcutta and is prosecuting Ph.D. on human rights for which she is compelled to stay in Kolkata for a maximum period and it is not possible for her to attend the Court regularly. This conduct is equally contrary to human nature. Because admittedly she is mostly residing in Kolkata where cause of action arose but filed the case at Malda only to take recourse to harassment. In the FIR there is no specific mention of what amount of dowry was demanded from her or her parents and what type of torture was inflicted by the present petitioners upon her during her stay at her matrimonial house. In course of examination of the witnesses by IO they have also stated unanimously that the petitioner was subjected to physical and mental torture without any description of the manner of torture or the amount of dowry demanded. If prima facie value is given to the material so collected by the IO there is no chance of conviction of the present petitioners even after the materials collected remains unrebutted in course of trial. So I hold that if the petition of complaint contains vague and omnibus allegation of physical and mental torture upon housewife without any improvement in course of investigation and where such allegation is contrary to normal human conduct, continuation of such prosecution on private dispute will be mere abuse of the process of law which should be prevented to save the in-laws from unnecessary harassment in connection with alleged offence u/s 498A/34 IPC.

11. Under the circumstances I hold that the First Information Report and the evidence collected during investigation do not satisfy the essential ingredients of any offence of 498A IPC against the present petitioners and so I am inclined to rely

upon the principles laid down in (2010)2 C Cr LR (SC) 75. I also hold that cognisance taken in this case is bad in law for want of jurisdiction u/s 177 Cr.P.C. in favour of the Learned Chief Judicial Magistrate, Malda. Therefore, further continuation of the instant proceeding will be mere abuse of the process of law and unnecessary harassment of the petitioners herein and to prevent it the instant proceeding is quashed and all the petitioners are discharged and released from their respective bail bonds. Return the CD.

12. Urgent photostat certified copy of this order, if applied for, be supplied to the respective parties, upon compliance of all necessary formalities.