

(2000) 09 CAL CK 0048

Calcutta High Court

Case No: Criminal Revision No. 2367 of 1991

Maya Ganguly (Mrs.)

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: Sept. 29, 2000**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 239, 240, 397, 401
- Dowry Prohibition Act, 1961 - Section 6(2)
- Penal Code, 1860 (IPC) - Section 323, 406, 498A, 506

Citation: (2001) 2 ILR (Cal) 149**Hon'ble Judges:** Ranjan Kumar Mazumdar, J**Bench:** Single Bench**Advocate:** Dilip Kumar Dutta and Milon Kumar Mukherjee, for the Appellant;

Judgement

Ranjan Kumar Mazumdar, J.

The instant Criminal revisional application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure is at the instance of the Petitioner Smt. Maya Ganguly and this is directed against the order passed by the learned Judicial Magistrate, 3rd Court, Barrakpur on August 26, 1991 in G.R. Case No. 2184 of 1988 which arose out of Lake Town P.S. Case No. 1 dated June 2, 1988 under Sections 498A/506/406/323 Indian Penal Code, and u/s 6(2) of the Dowry Prohibition Act.

2. The case of the Petitioner, a house wife, was in brief that she was leading a happy married life along with her husband, who happened to be an Engineer under the Government of India and her two school going children. But unfortunately this happiness did not last long inasmuch as she has been falsely implicated in G.R. Case No. 2184 of 1988 for allegedly committing offences punishable under Sections 498A/506/406/323 of the Indian Penal Code and u/s 6(2) of the Dowry Prohibition Act, by the de facto complainant-informant Smt. Anuradha Banerjee alias Soma, who set the Criminal law in motion by lodging a written complaint against her husband,

parents-in-law and younger sister-in-law making various allegations as to torture, extortion of money, assault etc. In the said written complainant, it was the case of the complainant Smt. Anuradha Banerjee that the marriage between the complainant and Bishnendu Prokash Banerjee was solemnized on May 26, 1984 according to Hindu rites and customs and that out of the wedlock a daughter was born on August 2, 1986. In the written complaint it was alleged by the complainant that her husband, parents-in-law and also younger sister-in-law of the complainant started misbehaving with her and put pressure on her for bringing more money and other valuable articles from the house of her father. The complainant silently suffered such torture and misbehavior with the expectation that things will improve after the birth of the child. But unfortunately the situation was just the reverse. The incident of torture and pressure on her for extorting money continued unabated. It so happened that on May 18, 1988 at about 4 P.M. the husband of the complainant, her parents-in-law and younger sister-in-law drove her out of the matrimonial home with her new born baby after assault, abuses and insulations. The further allegation of the complainant was that the valuable ornaments and other articles worth Rs. 59,279.30 which she got as presentations at the time of her marriage were entrusted on good faith to her husband and parents-in-law, were illegally held back by the said persons concerned and were never returned to her. According to the Petitioner she had no manner of connection with the alleged incident. It was her specific case in revision that she lived at a far away place from the complainant's matrimonial home and was living happily in her own home with her husband and two school-going children. It was again her specific case that she was not named by the complainant in the F.I.R. although she was very much known to the complainant being her another sister-in-law (elder sister-in-law). Again it was her further contention that the instant case in so far as this Petitioner was concerned was a case of glaring abuse of the process of the Court and hence the instant Criminal proceeding against her was liable to be quashed for securing the ends of justice but unfortunately the learned court below failed to appreciate her case and passed the impugned order dated August 26, 1991 in G.R. Case No. 2184 of 1988 whereby the said learned court rejected her prayer for discharging her from this case and fixed a date for framing charges against all the accused persons including the Petitioner. Hence the instant Criminal revisional application by the Petitioner for redressal of her grievances.

3. I have had the opportunity of hearing Learned Counsel Shri Dilip Kumar Dutta in the matter at length. None, however, appeared for and on behalf of the State of West Bengal despite intimation given to them.

4. The only question requiring consideration was whether the instant Criminal proceeding should be quashed in so far as the present Petitioner Smt. Maya Ganguly was concerned or not.

5. At the time of hearing, Learned Counsel for the Petitioner Shri Dilip Dutta vehemently submitted that the instant Criminal revisional application was totally bad in law and it was also a glaring instance of abuse of process of the Court inasmuch as the complainant-housewife set the Criminal law in motion by way of roping in the Petitioner, a married woman, simply on the ground that she happened to be the elder sister-in-law of the complainant. In that connection it was also submitted by Shri Dutta that his client had no manner of connection with the alleged incident of assault, torture, Criminal intimidation, use of force etc. on the house-wife. It was also submitted by him that the complainant was very much known to the Petitioner and there was no question of mistaken identity and hence the complainant very rightly never named the Petitioner specifically in the written complaint lodged by her with the police. It was also submitted by him that the Petitioner lived at a distance place far away from the matrimonial home and hence it was not feasible on the part of the Petitioner to do any Criminal act as against the house wife, her brother's wife. It was, therefore, out and out a case of concoction and false implication in so far as the Petitioner was concerned. He, therefore, urged upon this Court for quashing the instant Criminal proceeding in so far as the Petitioner was concerned.

6. It is the settled principle of the Criminal Justice System that before framing a charge against an accused, the Magistrate must give him/her sufficient opportunity of being heard. It is also well settled that the Magistrate is not bound by the opinion of the investigating Police Officer as to the nature of the offence committed by the accused. Hence the Magistrate must frame the correct charge against an accused according to the law on the facts and circumstances of the case, as would emerge out of the materials referred to in Section 239 and 240 of the Code of Criminal Procedure. If at the time of framing the charge, it appears that there are grounds for presuming that the accused did not commit any offence, he must discharge the accused. In other words, at the time of framing the charge against an accused, the Magistrate must be satisfied on the basis of the materials on record that such materials raise a positive presumption of guilt of the accused and not merely a suspicion. If on the existing materials on record, it is found that there is no ground for presuming prima facie that the accused committed Offence, the Magistrate shall discharge him from the case.

7. It appears from record that the name of the Petitioner does not figure in the written complaint lodged by the complainant with the Police Station. On the other hand, the complainant made specific allegations against her husband, father-in-law, mother-in-law and one younger sister-in-law being not the present Petitioner. This was significant. Again it appears from the record that the Petitioner lived at a distant place from the matrimonial home; this was another aspect of the matter. Again the facts remained that the husband of the Petitioner was an Engineer under the Government of India and it could not be expected that he would allow his wife being the Petitioner to visit house of the Petitioner's parents at Banpur Avenue in North

Calcutta from their residence at Kankulia road in South Calcutta often to create an atmosphere of ill feeling, animosity, rancour so as to inflict torture, assault on the housewife for extortion of money. How could it then be presumed that the Petitioner also took active part in the matter of inflicting torture and assault on the house-wife so as to compel her to bring more money as dowry ?

8. In this connection the statements recorded by the police in respect of several witnesses u/s 161 of the Code of Criminal Procedure deserves specific mention. It appears from the statement of complainant-housewife that the present marriage between her husband and herself was arranged and negotiated through the present Petitioner. It has also been recorded that the present Petitioner passed the remark that the behavior and talks of the complainant was like that of a girl living in a slum. It was further remarked by the Petitioner that the parents of the complainant did not give her (complainant) proper education. The statements of the parents and other witnesses of the complainant are also on the same lines in respect of the present Petitioner. In my view, even if such statements of the complainant and her parents are taken on their face value and accepted in their entirety, it did not make out any prima facie case in respect of the offences under Sections 498A/ 506/406/323 Indian Penal Code and Section 6(2) of the Dowry Prohibition Act in so far as the present Petitioner Smt. Maya Ganguly was concerned.

9. Having regard to the totality of the facts and circumstances of the case, I am of the view that the Petitioner has unnecessarily been entangled with the alleged offences which is mainly against the husband, parents-in-law and another younger sister-in-law (not being the Petitioner) of the house-wife as mentioned in the F.I.R. lodged by the house-wife with the Police Station. In my view, this is a case of glaring injustice or grave injustice as against the present Petitioner. In my view, this a case of abuse of process of the Court and hence the impugned order passed by the learned court below in so far as the present Petitioner is concerned is liable to be quashed for securing the ends of justice.

10. In the facts and circumstances of the case I am inclined to modify the impugned order passed by the learned court below on August 26, 1991. I, therefore, direct that the Petitioner be discharged from this case and she is accordingly so discharged from this case. The case will, however, proceed against the remaining accused persons mentioned in the order passed by the learned trial court below on August 26, 1991. In the circumstances the learned court below is directed to go ahead with G.R. Case No. 2184 of 1988 concerning all accused persons excepting the present Petitioner Smt. Maya Ganguly, who has been discharged from this case. The impugned order dated August 26, 1991 stands modified to that extent. Proceeding against the Petitioner Smt. Maya Ganguly is quashed. Stay, if any, is vacated.

11. The instant Criminal revisional application is thus disposed of.

12. There will be no order as to costs.

13. Office is directed to send a copy of this order to the learned trial court below immediately.