IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 93 of 2021

Rupen Dhar & Ors.
Vs.
The State of West Bengal & Ors.

For the petitioner	:	Mr. Hillol Saha Poddar
For the State	:	Mr. Aditi Shankar Chakraborty, Ld. APP Mr. Nilay Chakraborty
Heard on	:	01.05.2023
Judgment on	:	17.05.2023

Ajoy Kumar Mukherjee, J.

1. This is an application under section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the proceeding being G.R. Case No. 5375 of 2019 arising out of New Jalpaiguri Police Station Case No. 1145 of 2019 dated December, 19th, 2019 under section 498-A of Indian Penal code, 1860 (IPC) presently pending before the Learned Chief Judicial Magistrate, Jalpaiguri. Petitioners contended that the petitioner no. 1 is the Father –in-Law , petitioner no. 2 is the Mother-In-Law and petitioner no.3 is the married

Sister-In-Law and petitioner no. 4 is the husband of the defacto complainant. Petitioners contended that the opposite party no.2 before the present complain had earlier lodged another complain on 14.02.2016 contending that she was married with present petitioner no. 4, Raju Dhar and after marriage she had gone to her matrimonial house, but during her stay at her matrimonial house her Mother-in-Law started inflicting physical and mental torture upon her and thereafter the defacto complainant came back to her paternal home at Siliguri for continuing her studies. Subsequently her husband took her at garambasti after completion of studies. Few days thereafter her husband went to Malda at her service place and taking advantage of her helplessness her Father-In-Law and Mother-In-Law being accused no.1 and 2 forced her to work at their hotel and thereby inflicted physical and mental torture upon her. Thereafter her husband started ignoring her. In the meantime her husband got employment at Railway department. In the month of January 2011 her husband had physically assaulted her and had driven her out from the matrimonial home. Thereafter her parents went to her matrimonial home for settlement but the accused persons abused them with filthy language and thereafter her husband had stopped communication with her. Thereafter she had initiated one maintenance proceeding where the opposite party No. 4 herein appeared and denied the marriage.

2. On the basis of the said earlier complain Kalchini Police Station started case being Kalchini P.S. Case No. 37 of 2016 dated 14.02.2016 under section 498-A of the IPC. Investigating authority after completion of investigation submitted charge sheet against the petitioners. After trial learned Magistrate

on 17.08.2019 was pleased to pass an order of acquittal against the present petitioners and others. Four months thereafter the opposite party no. 2 herein again lodged present FIR against present petitioners on the basis of self same allegation of physical and mental torture on the demand of dowry. On perusal of the present/second FIR it appears that sum and substance of allegation levelled against the present petitioners is that she was subjected to physical and mental torture during her stay at her matrimonial house and she was driven out from her matrimonial home in the month of January, 2011. On the basis of said complaint present proceeding has been initiated.

3. Learned counsel appearing on behalf of the petitioner Mr. Poddar submits that alleged incident of physical and mental torture occurred in January, 2011 and defacto complainant lodged FIR on 09.12.2019. He further submitted that registration of FIR and initiation of the proceeding without inquiry is in violation of law laid down in ***Lalita Kumari Vs. State of Uttar Pradesh and others*** reported in **(2014) 2 SCC 1.** He further submits that defacto complainant created concocted story after acquittal of the present petitioners from the earlier case with intent to harass the whole family of the petitioners. He further submits that the petitioner herein has already filed a suit for declaration that the opposite party no.2 is not legally married wife, which is sub-judice before the appropriate forum. Accordingly he has prayed for quashing the said proceeding.

4. It appears that inspite of service, opposite party no.2 is not represented. Mr. Chakraborty on behalf of the state submits that it is true that an earlier proceeding initiated by the present defacto complainant against the petitioners

has ended in acquittal and no appeal has been preferred against said acquittal order. However he leaves the matter to the discretion of the court.

5. On perusal of the FIR of earlier proceeding as well as the present proceeding it appears that the allegation is almost same which reiterates allegation of inflicting torture by the petitioners herein upon the opposite party no. 2. In the present FIR i.e. in the second FIR allegation is that the same defacto complainant was subjected to physical and mental torture and she was driven out in the year of 2011. The first FIR which was lodged in 2016 and which has ended in acquittal, was filed long after the said cause of action allegedly arose in 2011, as stated in the second FIR. It is curious enough that the second FIR has been lodged after four months of acquittal from first FIR without making out any new case or new cause of action.

6. Supreme Court and High Courts in numerous instances expressed concern over the misuse of section 498-A IPC and the increased tendency of implicating husband and relatives of the husband in matrimonial disputes. Upon perusal of the contents of both the FIR it reveals that the allegations are the same, which is omnibus in nature. Infact such implication by way of general omnibus allegation on repeated occasion resulted misuse of the process of law. There is nothing to show that the opposite party has preferred any appeal against the order of acquittal passed in the earlier proceeding. Accordingly the veiled object behind the lame prosecution apparently is to harass the petitioners.

7. It is well settled that in order to lodge a proper complain mere mention of the section and language of those sections is not sufficient. In all such matters

what is required to be brought to the notice of the court, is the particulars of the offence committed by each of the accused persons and role played by each of them in committing that offence. When the present complaint is taken from that view point the complaint appears to be sadly vague as it does not show as to which petitioner has committed what offence and what is the exact role played by the petitioners in the alleged commission of the offence.

8. In view of above allowing the present proceeding to continue would be an abuse of process of court and for the ends of justice it is required that the proceeding is to be quashed because the court proceeding ought not to be permitted to degenerate into a weapon of harassment or prosecution.

9. CRR 93 of 2021 is accordingly allowed.

10. The criminal proceeding being Jalpaiguri P.S. Case No. 1145 of 2019 dated December 19, 2019 under Section 498-A IPC presently pending before the court of learned Chief Judicial Magistrate, Jalpaiguri, is hereby quashed.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(AJOY KUMAR MUKHERJEE, J.)