

Criminal RevisionPresent: **The Hon'ble Justice Ashim Kumar Roy**

Judgment on: 03.03.2010

C.R.R. No. 123 of 2010**Sri Braja Kishore Roy****versus****The State of West Bengal & Anr.****Point:**

QUASHING: Defecto complainant no longer desirous to proceed with the case and intimated the police to quash the case- During investigation police has recorded statement of two of the neighbours and they supported her case against the present petitioner- The proceeding whether be quashed- Code of Criminal Procedure, 1973 S. 482.

Fact: The petitioner by filing the instant application prayed for quashing of a proceeding under Section 341/323/380/389/506/114 of the Indian Penal Code on the ground that there is no clear and conclusive allegation against the petitioner.

Held:

The mother is no longer desirous to proceed with the case against the son and accordingly intimated the concerned police station and as such the case against the present petitioner be quashed cannot be taken into consideration because of the simple reason, the defacto-complainant, mother not only refused to accept the notice, she was not also represented in this criminal revision. In any event, no FIR can be quashed on the mere denial of an accused as regards to his involvement in the commission of the offences and on the further ground that such FIR was lodged to harass him. Those are matters of defence and cannot be gone into without the trial on evidence. During investigation police has recorded statement of two of the neighbours and they supported her case

against the present petitioner. In view of aforesaid materials available during the preliminary investigation of the case, it cannot be said that no offence has been made out against the petitioner.

Paragraphs 3 & 4

For Petitioner : Mr. Manik Lal Poddar

For State : Mr. Debabrata Roy

The Court:

Invoking Section 482 of the Code of Criminal Procedure, the present petitioner has moved this Court for quashing of a First Information Report relating to the offences punishable under Sections 341/323/380/389/506/114 of the Indian Penal Code as against him.

2. According to the Learned Counsel of the petitioner the FIR should be quashed on the following grounds;

- (a) No case has been made out.
- (b) The petitioner was not involved in the alleged incident.
- (c) Mother has intimated the police that the dispute with her son has been settled and she was no longer desirous to proceed against her son.
- (d) There is no clear and conclusive allegation against the petitioner.
- (e) The case has been started by the mother to harass the son.

On the other hand, Mr. Swapan Kumar Mullick produced the Case Diary and submitted that sufficient materials have been collected during investigation showing the petitioner's involvement in the commission of the offence.

Pursuant to an order passed by this Court a copy of this application was sent to the opposite party no. 2, the complainant. It appears the same has been returned unserved with the postal endorsement "refused".

3. So far as the contention of the petitioner that the mother is no longer desirous to proceed with the case against the son and accordingly intimated the concerned police station and as such the case against the present petitioner be quashed cannot be taken into consideration because of the simple reason, the defacto-complainant, mother not only refused to accept the notice, she was not also represented in this criminal revision. In any event, no FIR can be quashed on the mere denial of an accused as regards to his involvement in the commission of the offences and on the further ground that such FIR was lodged to harass him. Those are matters of defence and cannot be gone into without the trial on evidence.

4. The present petitioner is the father-in-law of the eldest son of the defacto-complainant. It is the case of the defacto-complainant that after the death of her husband, her son and daughter-in-law started torturing her physically and mentally and also drove her out from her residence and she was compelled to take shelter at the house of her sister. Thereafter, she moved the Court for her maintenance when the son appeared in the Court and took her back. The Hon'ble High Court has also passed an order directing her son to allow her to stay at their residential house. However, immediately after she returned to her home they once again started torturing her both physically and mentally and her gold ornaments were snatched away from her person by her son and the daughter-in-law. They also got some blank papers including bank papers signed by her. The present petitioner, the father-in-law of her eldest son also asked her to transfer all her properties in the name of her son otherwise she will be killed by administering poison in her food. According to the defacto-complainant, she was physically assaulted and filthily abused by her son

and her daughter-in-law at the instance of the present petitioner. I find during investigation police has recorded statement of two of the neighbours and they supported her case against the present petitioner. In view of aforesaid materials available during the preliminary investigation of the case, it cannot be said that no offence has been made out against the petitioner.

5. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

6. 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.)