

Criminal Revision

Present: **The Hon'ble Justice Ashim Kumar Roy**

C.R.R. No. 3657 of 2008
With
CRAN No. 547 of 2010
Judgment On: 16-04-2010.

Pran Ballav Biswas & Anr
versus
The State & Anr

POINTS:

QUASHING, WRONG SECTION- FIR recorded for offences punishable under Sections 498/34 of the Indian Penal Code- Allegations clearly constitute the offence under Sections 498A/34 IPC- Whether proceeding should be quashed- Code of Criminal Procedure, 1973 S.482- Indian Penal Code, Ss. 498/498A/ 34

FACTS: This is a case where investigation has already been completed and police has submitted charge-sheet against the petitioners for cognizable offences punishable under Sections 498A/34 of the Indian Penal Code.

The petitioners, who happened to be the husband and the relations of the husband, invoking inherent jurisdiction of this Court, moved this application for quashing of a FIR relating to offence punishable under Section 498/34 of the Indian Penal Code.

HELD:

It is true that FIR has been recorded for offences punishable under Sections 498/34 of the Indian Penal Code and it is equally true that those offences are non-cognizable offence and therefore neither the FIR can be recorded nor the police can make investigation without the permission of the Court. However, having gone through the content of the First Information Report, the Court has no

doubt that the allegations made therein has clearly disclosed a prima facie case of commission of offences punishable under Sections 498A/34 of the Indian Penal Code. This is a pure mistake on the part of the police authority to register a case under Sections 498/34 IPC, when the allegations clearly constitute the offence under Sections 498A/34 IPC. In any event a wrong citation of any provisions of penal Section in FIR would be of no consequences, when the allegations do disclose commission of a cognizable offence. Having carefully gone through the evidentiary materials collected by the police during investigation, the Court finds there are allegations of cruelty both physical and mental perpetrated upon the defacto-complainant soon after her marriage, when she just came to her matrimonial home. The police during the course of investigation also recorded statement of the local persons, and they also lent support to the case of the defacto-complainant. In such view of the matter, it cannot be said that submission of the charge-sheet is not justified and accordingly question of quashing of the charge-sheet is not at all called for. Para-4

For Petitioners : Mr. Sunirmal Nag

For State : Mr. Sanat Chowdhury

THE COURT:

1. The petitioners, who happened to be the husband and the relations of the husband of the opposite party no. 2, invoking inherent jurisdiction of this Court, moved this application for quashing of a FIR relating to offence punishable under Section 498/34 of the Indian Penal Code.
2. The Learned Counsel appearing on behalf of the petitioners vehemently urged the following points in support of the prayer for quashing;

(a) The very initiation of the impugned criminal proceedings against the petitioners was absolutely illegal inasmuch as the content of the complaint by itself did not disclose commission of the offences as alleged.

(b) No FIR can be recorded for offence punishable under Section 498/34 IPC, a non-cognizable offence and the police has no power either to record FIR or to undertake any investigation thereupon.

3. Heard the Learned Counsel appearing on behalf of the petitioner as well as the Learned Counsel appearing on behalf of the State. Perused the Case Diary containing the evidentiary materials.

4. It is true that FIR has been recorded for offences punishable under Sections 498/34 of the Indian Penal Code and it is equally true that those offences are non-cognizable offence and therefore neither the FIR can be recorded nor the police can make investigation without the permission of the Court. However, having gone through the content of the First Information Report, I have no doubt the allegations made therein has clearly disclosed a prima facie case of commission of offences punishable under Sections 498A/34 of the Indian Penal Code. In order to make out any case for an offence punishable under Section 498 of the Indian Penal Code, there must be the allegations of enticing or taking away or detaining, with a criminal intent, a married woman, however in the four-corners of the impugned complaint there is no such allegation. This is a pure mistake on the part of the police authority to register a case under Sections 498/34 IPC, when the allegations clearly constitute the offence under Sections 498A/34 IPC. In any event a wrong citation of any provisions of penal Section in FIR would be of no consequences, when the allegations do disclose commission of a cognizable offence. This is a case where investigation has already been completed and police has submitted charge-sheet against the petitioners for cognizable offences punishable under Sections 498A/34 of the Indian Penal Code. I have carefully gone through the evidentiary

materials collected by the police during investigation. There are allegations of cruelty both physical and mental perpetrated upon the defacto-complainant soon after her marriage, when she just came to her matrimonial home. The police during the course of investigation also recorded statement of the local persons, and they also lent supports to the case of the defacto-complainant. In such view of the matter, it cannot be said that submission of the charge-sheet is not justified and accordingly question of quashing of the charge-sheet does not at all called for.

5. This criminal revision has no merit and accordingly stands dismissed.

6. In view of dismissal of the main criminal revisional application, the application for extension of interim order being CRAN No. 547 of 2010 accordingly stands disposed of.

7. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)