

Criminal Revision**PRESENT: THE HON'BLE MR. JUSTICE KALIDAS MUKHERJEE****JUDGMENT ON: 07.5.2010.****C.R.R. NO. 2856 of 2009****Sidharth Agarwal****Vs.****State of West Bengal & another****Points:**

QUASHING-Defacto complainant unwilling to proceed with the case- Evidence does not show that deceased was subjected to cruelty- If the proceeding continue whether it amounts to abuse of process of Court- Code of Criminal Procedure, 1973 S.482

Facts:

The father-in-law lodged F.I.R. with the O.C. of Tollygunge P.S. alleging that the petitioner and his family members mentally tortured and harassed his daughter and also demanded dowry. Charge sheet was submitted under Section 498A/306 of the I.P.C. But none of the witnesses stated anything incriminating against the accused/petitioner and no prima facie case has been made out.

Held:

Since the defacto complainant has submitted an application expressing his unwillingness to proceed with the case and from the statements of the witnesses there is nothing to show that the deceased was subjected to cruelty or the accused abetted her in any way for committing suicide, if the proceedings are allowed to continue it would be the abuse of the process of the Court. It is a fit case for quashing of the proceedings under Section 482 Cr.P.C. **Para-9**

Cases Cited:

2010(1) SCC 917 [Gangula Mohan Reddy Vs. State of Andhra Pradesh];

2009 CR.L.J. 4678 [Anil Kumar Sarkar Vs. The State of West Bengal & Ors.];

2002 Cr.L.J. 2796 [Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh];

unreported decision of this Hon'ble Court in CRR 3976 of 2009 [Bithal Maliah @ Bithal Nath Maliah Vs. The State of West Bengal & Anr.].

(2008)3 SCC (Cri) 88 [Arvind Barsaul (DR.) and others Vs. State of Madhya Pradesh & another]

FOR THE PETITIONER: Mr. Manjit Singh,
Mr. Anand Keshari.

FOR THE STATE : Mr. Kasem Ali Ahmed

FOR THE O.P. NO.2: Mr. Sandipan Ganguly,,
Mr. Partha Pratim Sarkar

KALIDAS MUKHERJEE, J. :

1. This is an application under Section 482 of the Code of Criminal Procedure praying for quashing of the criminal proceedings and the charge sheet submitted in connection with the CGR Case No. 998 of 2009 arising out of Tollygunge Police Station Case No. 50 of 2009 dated 18.3.2009 under Sections 498A/306 of the Indian Penal Code.
2. The case of the petitioner, in short, is that the O.P. No. 2 lodged F.I.R. with the O.C. of Tollygunge P.S. alleging that the petitioner and his family members mentally tortured and harassed his daughter and also demanded dowry. It has further been alleged that his daughter was mentally and physically very strong and being well educated she could not take her life herself. A case was registered under Sections 498A and 306 of the I.P.C. being F.I.R. No. 50 dated 18.3.2009. After completion of investigation charge sheet was submitted under Section 498A/306 of the I.P.C.
3. The learned Counsel appearing on behalf of the petitioner submits that the defacto-complainant being misled lodged the F.I.R. and he has no grudge against the son-in-law. It is contended that none of the witnesses stated anything incriminating against the accused/petitioner and no prima facie case has been made out. It is submitted that from the materials collected during investigation it would appear that there was no abetment on the part of the accused/petitioner and the ordinary conjugal quarrel or altercation would not, ipso facto, amount to cruelty. It is contended that there is no material to show that there was

any instigation on the part of the accused/petitioner towards the commission of suicide by his wife. The learned Counsel has referred to the decisions reported in *2010(1) SCC 917 [Gangula Mohan Reddy Vs. State of Andhra Pradesh]*; *2009 CR.L.J. 4678 [Anil Kumar Sarkar Vs. The State of West Bengal & Ors.]*; *2002 Cr.L.J. 2796 [Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh]*; *unreported decision of this Hon'ble Court in CRR 3976 of 2009 [Bithal Maliah @ Bithal Nath Maliah Vs. The State of West Bengal & Anr.]*.

4. The learned Counsel appearing on behalf of the State submits that in the F.I.R. allegation of mental and physical torture was made and at this stage there is no ground to quash the proceedings.
5. The F.I.R. was lodged by the father of the deceased alleging that since marriage of his daughter with Sidhartha Agarwal the accused and his family members mentally tortured and harassed his daughter and also demanded dowry. From the order sheet dated 1.4.2009 of the learned Chief Judicial Magistrate, Alipur it appears that on 1.4.2009 the learned A.P.P. submitted that there was letter of the defacto-complainant and statement of the defacto-complainant in the C.D. saying that he had no grudge against his son-in-law and considering that matter the learned Magistrate granted bail to the accused. It appears from the prayer of the I.O. dated 1.4.2009 made to the learned Magistrate that the defacto-complainant submitted an application addressed to the O.C., Section U-I intimating that he was unwilling to proceed with this case. The I.O. also stated that he examined the defacto-complainant and he accepted that fact.

6. The learned Counsel for the O.P. 2, that is, the defacto-complainant submits that the I.O. examined the witnesses and that there are the statements which may be taken into consideration.
7. It appears from the statement of Binapani Patra who used to work in the house of the deceased that she did not find any quarrel between the deceased and the accused. Witness Naresh Yadav has stated that he did not find any quarrel between the accused and the deceased on any date. Witness Nidhi Gupta, the brother of the deceased, did not state anything against this accused person. Witness Anjali Mistri who used to look after the children of Sidhartha has stated that occasionally there was altercation between the accused and the deceased. Witness Usha Kedia, the mother of the deceased, did not also say anything against the accused/petitioner. Pankaj Kedia, son of Ramesh Kedia did not specifically raise any allegation against the accused/petitioner. There is no allegation in the statement of the witnesses that the accused person committed torture upon the deceased or instigated her to commit suicide or there was any demand for dowry. There was no positive or overt act on the part of the accused in the matter of instigation or aiding in the commission of suicide by the deceased. In this connection the application submitted by the de facto complainant before the I.O. stating his unwillingness to proceed with the case has also to be taken into consideration. Considering all the materials, I find that there is no material in support of the allegation under Section 498A/306 I.P.C.
8. The learned Counsel for the O.P. No. 1 has cited a decision reported in *(2008)3 SCC (Cri) 88 [Arvind Barsaul (DR.) and others Vs. State of Madhya Pradesh & another]* wherein the parties compromised and the complainant was not interested in continuing the proceeding under Section 498A and the Hon'ble Apex Court under Article 142 of the

Constitution of India held that continuation of the proceedings would amount to abuse of the process of law. It is contended by the learned Counsel for the State that in the aforesaid case the Hon'ble Apex Court exercised jurisdiction under Article 142 of the Constitution of India, but, this Court cannot exercise that power Under Section 482 Cr.P.C.

9. Since the de facto complainant has submitted an application expressing his unwillingness to proceed with the case and from the statements of the witnesses, as discussed above, there is nothing to show that the deceased was subjected to cruelty or the accused abetted her in any way for committing suicide, I find that if the proceedings are allowed to continue it would be the abuse of the process of the Court. It is a fit case for quashing of the proceedings under Section 482 Cr.P.C. The application under Section 482 of the Code of Criminal Procedure is allowed.
10. The proceedings of CGR Case No. 998 of 2009 arising out of Tallygunge Police Case No. 50 of 2009 dated 18.3.2009 under Section 498A/306 I.P.C. now pending in the Court of learned Chief Judicial Magistrate, Alipur, stand quashed. Accused person is discharged.
11. Criminal Section is directed to send a copy of this order to the learned Court below immediately.
12. Urgent Photostat certified copy, if applied for, be handed over to the parties as early as possible.

(Kalidas Mukherjee, J.)