

CRIMINAL REVISION**Present :The Hon'ble Mr. Justice Prasenjit Mandal****C.R.R. No.3525 of 2009**

Judgement On: June 23, 2010.

Sangeeta Deb

Versus

State of West Bengal & Anr.

POINTS

QUASHING – A.C.J.M. quoted wrong Section while transferring the case to Judicial Magistrate-
Judicial Magistrate treated the said petition of complaint in accordance with law–Whether
the proceeding can be quashed- Code of Criminal Procedure ,1973 ,S 482

FACTS

The petitioner prayed for quashing of that proceeding on the ground that though the petition of
complaint was filed under Section 500 of the I.P.C., the learned Additional Chief Judicial
Magistrate, Alipore took cognizance for the offence under Section 498A/34 of the I.P.C. which was
not at all a case. After taking cognizance, the case was transferred to the Court of the learned
Judicial Magistrate, Fourth Court Alipore for disposal. Upon recording statement of the witnesses
under Section 202 of the Cr.P.C. on S.A., the learned Magistrate issued summons under Section
500 of the I.P.C. That complaint was lodged on the basis of a publication made in the 'Ganadoot
Patrika' published at Agartala over the case lodged by the petitioner. The petition of complaint
being AC-No.2372 of 2008 under Section 500 of the I.P.C. was filed by the complainant against the
accused petitioner with evil and malicious motive as a counter-blast case of the criminal proceeding

under Section 498A of the I.P.C. pending in the Court of the learned Additional Chief Judicial Magistrate at Agartala in order to create pressure upon the petitioner who is now in distressed condition after being driven out by her husband. Being aggrieved by issuance of process, the petitioner has preferred this revisional application.

HELD

Quoting a wrong Section on the part of the learned A.C.J.M. which is not at all the case of the complainant but a reference of the case lodged by the accused petitioner against him, does not give rise the accused petitioner any right to pray for quashing of the said proceeding. The fact remains that the learned A.C.J.M. took cognizance of the matter and then he transferred the petition of complaint to the learned Judicial Magistrate, Fourth Court for disposal in accordance with law. Thereafter the learned Judicial Magistrate treated the said petition of complaint in accordance with law. Thus, there is no illegality in the matter which entitles the accused petitioner to pray for quashing the proceeding.

Para 7

For the petitioner:

Mr. Durgadas Purakayastha,
Mr. Surnirmal Nag.

For the Opposite party no.2:

Mr. Rana Mukherjee

Prasenjit Mandal, J:

THE COURT 1.This revisional application under Section 482 of the Code of Criminal Procedure, 1973 has been filed for quashing the proceeding being AC-2372 of 2008 under Section 500 of the I.P.C.

2.The fact of the case leading to the filing of this revisional application is that the petitioner was married to Siddhartha Deb on 19.09.2006 as per Hindu customs and rites. After some days of the said marriage, the petitioner was subjected to torture, physically and mentally, by her husband. Ultimately, in April, 2008 she was compelled to leave her matrimonial house. She filed one petition of complaint with Agartala Women Police Station for offence under Section 498A/34 of the I.P.C. for investigation and the accused persons, namely, Siddhartha Deb, Subhra Deb, Sudhendu Bhusan Deb and Soma Deb were arrested and they were remanded to judicial custody by the learned Magistrate from 08.04.2008 to 19.04.2008. Thereafter they were granted bail on 17th April, 2008 and 21st April, 2008 by the Hon'ble Gauhati High Court, Agartala Bench. Chargesheet was submitted against the accused persons on 14.12.2008. The said criminal case is now pending in the Court of the learned Chief Judicial Magistrate, West Tripura, Agartala. The prime accused person filed one petition under Section 482 of the Cr.P.C. and that petition is now pending before the Hon'ble Gauhati High Court, Agartala Bench. Thereafter the petitioner got summons dated 09.03.2009 issued by the Judicial Magistrate, First Class, Fourth Court, Alipore, District – South 24 Parganas directing the petitioner to appear personally or pleader in connection with a complaint case bearing No.AC-2372 of 2008 under Section 500 of the I.P.C. before the learned Judicial Magistrate, Fourth Court, Alipore on 20.04.2009 at 10.00 o'clock. The petitioner appeared before the said Court and she was granted bail.

3.The petitioner prayed for quashing of that proceeding on the ground that though the petition of complaint was filed under Section 500 of the I.P.C., the learned Additional Chief Judicial Magistrate, Alipore took cognizance for the offence under Section 498A/34 of the I.P.C. which was not at all a case. After taking cognizance, the case was transferred to the Court of the learned Judicial Magistrate, Fourth Court Alipore for disposal. Upon recording statement of the witnesses under Section 202 of the Cr.P.C. on S.A., the learned Magistrate issued summons under Section 500 of the I.P.C. That complaint was lodged on the basis of a publication made in the 'Ganadoot Patrika' published at Agartala over the case lodged by the petitioner. The petition of complaint being AC-No.2372 of 2008 under Section 500 of the I.P.C. was filed by the complainant against the accused petitioner with evil and malicious motive as a counter-blast case of the criminal proceeding under Section 498A of the I.P.C. pending in the Court of the learned Additional Chief Judicial Magistrate at Agartala in order to create pressure upon the petitioner who is now in distressed condition after being driven out by her husband. Being aggrieved by issuance of process, the petitioner has preferred this revisional application.

4.Mr. Purukastha submits that though the petition of complaint was filed under Section 500 of the I.P.C. , the learned A.C.J.M. took cognizance of the offence under Section 498A/34 of the I.P.C. which was not at all a case against the petitioner. In fact, it was a case under Section 500 of the I.P.C. Ultimately, the learned Magistrate, Fourth Court issued summons upon the accused petitioner under Section 500 of the I.P.C. So cognizance taken by the learned A.C.J.M. is totally bad. Issuance of process by the learned Magistrate, Fourth Court is also bad. So the case should be quashed.

5. On the other hand, Mr. Rana Mukherjee points out the provisions of Section 499 of the I.P.C to show that the Magistrate is within its competence to issue process whenever he found element of defamation in the proceeding. So he justifies the procedure adopted by the Court.

6. Having considered the submissions of the learned Advocate for both the parties and on perusal of the materials on record, I find that though the learned A.C.J.M., Alipore passed the order no.1 dated 18.12.2008 to the effect that a petition of complaint is filed under Section 498A/34 of the I.P.C., in fact, the petition of complaint as filed before the learned Magistrate is not one under Section 498A/34 of the I.P.C. but one under Section 500 of the I.P.C. It is a mere mistake on the part of the Learned A.C.J.M., Alipore to record that the complaint was filed under Section 498A/34 of the I.P.C. Upon recording evidence of the witnesses on S.A., the learned Magistrate found, prima facie, case under Section 500 of the I.P.C. and then he issued process upon the accused person under that Section.

7. Now quoting a wrong Section on the part of the learned A.C.J.M. which is not at all the case of the complainant but a reference of the case lodged by the accused petitioner against him, I hold, does not give rise the accused petitioner any right to pray for quashing of the said proceeding. The fact remains that the learned A.C.J.M. took cognizance of the matter and then he transferred the petition of complaint to the learned Judicial Magistrate, Fourth Court for disposal in accordance with law. Thereafter the learned Judicial Magistrate treated the said petition of complaint in accordance with law. Thus, I find that there is no illegality in the matter which entitles the accused petitioner to pray for quashing the proceeding. Accordingly, this revisional application is without any merit.

8. It is, therefore, dismissed.

9. Considering the circumstances, there will be no order as to costs.

10.Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)