

Md. Ashiruddin and anr. Vs. State of West Bengal and anr.

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Court : Kolkata

Decided On : Mar-25-2008

Reported in : (2008)2CALLT226(HC)

Judge : Kalidas Mukherjee, J.

Acts : Indian Penal Code (IPC) - Sections 34, 325, 406 and 498A; ;Muslim Shariat Laws; ;[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125, 156(3), 161, 245, 300 and 482

Appeal No. : C.R.R. No. 999 of 2006

Appellant : Md. Ashiruddin and anr.

Respondent : State of West Bengal and anr.

Advocate for Def. : Krishna Ghosh, Adv.

Advocate for Pet/Ap. : Milon Mukherjee, Sr. Adv., ;Lutful Haque and ;Ameena Kabir, Advs.

Disposition : Application allowed

Judgement :

Kalidas Mukherjee, J.

1. This is an application under Section 482 read with Section 300 Cr.PC praying for quashing of Hanskhali P.S. Case No. 281 dated 06.12.2005 under Section 498A/34 IPC pending in the Court of learned Additional Chief Judicial Magistrate, Ranaghat, District - Nadia.

2. The petitioner No. 1 is a retired Sub-Inspector of Police and the petitioner No. 2 is a Constable. The first wife of petitioner No. 1 died and thereafter he again married O.P. No. 2 Rojina Bibi on 25.06.2004 according to Muslim Shariat Laws and both of them were leading conjugal life in village Murcha, P.S. Khargram, District-Murshidabad. O.P. No. 2 was a widow at the time of her marriage with petitioner No. 1 and had a son and two daughters out of her previous marriage. The petitioner No. 1 used to reside in Krishnanagar where he was posted and the O.P. No. 2 was residing in village Morcha. There was difference of opinion between the spouses. O.P. No. 2 filed a case against the petitioner No. 1 under Section 498A/325 IPC being Kotwali P.S. Case No. 95/2005 dated 06.4.2005. Charge sheet was issued on 15.4.2005 being C.S. No. 80/2005 under Section 498A IPC. The O.P. No. 2 complained of mental and physical torture. On 11.4.2005 O.P. No. 2 made an affidavit before the learned Sub-Divisional Judicial Magistrate; Krishnanagar stating that she had no complaint against her husband whatsoever. In the affidavit she stated that when she went to Krishnanagar, a person took her signatures on some blank sheets and taking advantage of that filed a case against her husband. She also stated that her husband never committed torture upon her physically or mentally and that they had been leading a happy conjugal life. On 9th June, 2005 the petitioner No. 1 was discharged by the learned S.D.J.M., Krishnanagar on the basis of affidavit made on 11.4.2005. Thereafter the petitioner No. 1 divorced to the O.P. No. 2 on 04.8.2005 and communicated the same by registered post, with A.D. dated 13.8.2005 and 18.8.2005, but, the registered letter dated 18.8.2005 came back to the petitioner as 'refused' by the O.P. No. 2. O.P. No. 2 filed a case in the Court of Chief Judicial Magistrate, Krishnanagar on 29.8.2005 under Section 498A/34 IPC against the petitioners, but, no effective step was taken thereof. The O.P. No. 2 also filed a case in the Court of Additional Chief Judicial Magistrate, Krishnanagar against the petitioner No. 1 under Section 125 Cr.PC being case No. 481 of 2004. The O.P. No. 2 also filed another case under Section 498A/34 IPC (G.R. No. 1343 of 2005)

Hnaskhali P.S. Case No. 281 dated 06.12.2005, in the Court of Additional Chief Judicial Magistrate, Ranaghat. The allegations raised against the petitioners are false and concocted. The continuance of proceeding under Section, 498A/34 IPC in Hanskhali P.S. Case No. 281 dated 06.12.2005 is unwarranted and will be the abuse of the process of the Court. In view of the discharge of the petitioner No. 1 from earlier case being Kotwali P.S. Case No. 95 of 2005, the instant case being Hanskhali P.S. Case No. 281 dated 06.12.2005 under Section 498A/34 IPC cannot proceed and the same is not maintainable. Under the circumstances, the petitioner has filed the instant application praying for quashing of the proceeding under Section 482 Cr.PC.

3. Mr. Mukherjee appearing on behalf of the petitioners submits that the earlier case ended in discharge on 09.6.2005 passed by learned S.D.J.M., Krishnanagar in G.R. Case No. 408 of 2005, Kotwali P.S. Case No. 95 of 2005. Mr. Mukherjee submits that the divorce was effected on 04.8.2005 when the factum of divorce was communicated to O.P. No. 2 herein. Mr. Mukherjee contends that same allegation as made in the earlier complaint was raised against the petitioner No. 1 herein in the subsequent petition of complaint which was sent to P.S. under Section 156(3) Cr.PC on 06.12.2005 bearing Hanskhali P.S. Case No. 281 dated 06.12.2005. Mr. Mukherjee contends that there is no allegation under Section 406 IPC in the instant case and, moreover, there is suppression of material facts in the subsequent complaint being Hanskhali P.S. Case No. 281 date 06.12.2005. Mr. Mukherjee contends that when the petitioner No. 1 was discharged in the earlier case which ended in his discharge on 09.6.2005, the subsequent case on the same allegations bearing Hanskhali P.S. Case No. 281 dated 06.12.2005 is not maintainable. Regarding the suppression of material facts viz. discharge of the petitioner No. 1 in the earlier case, Mr. Mukherjee has referred to and relied on the decisions reported in 2005 SCC (Cri) 1322 [MCD v. State of Delhi and Anr.] para 21 and : AIR 2004 SC2421 [S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Ors.] para 13.

4. Mrs. Ghosh appearing on behalf of the State submits that the petitioner No. 1 herein was the Sub-Inspector of Police and regarding the alleged torture meted out to O.P. No. 2, there are medical reports and statements of the witnesses

recorded under Section 161 Cr.PC. It is contended that it is not clear whether there was divorce or not by way of Talaknama. As regards the allegation of torture under Section 498A IPC on the same facts in the subsequent case, Mrs. Ghosh contends that the manner of alleged torture upon O.P. No. 2 in the second case was different and there is added period of alleged torture. Mrs. Ghosh contends that O.P. No. 2 was assaulted by the petitioner No. 1 as per allegation and in view of the medical reports and the statements of the witnesses recorded under Section 161 Cr.PC, there is no ground to quash the proceedings pending in the learned Court below. Mrs. Ghosh contends that the petitioner No. 1 herein can raise such question in the Trial Court at the appropriate stage, but, not in the instant application under Section 482 Cr.PC.

5. From the F.I.R. of Kotwali P.S. Case No. 95 of 2005 dated 06.4.2005 G.R. No. 408 of 2005 it appears that the occurrence of the alleged offence was after the marriage till the date of lodging the F.I.R. i.e. 06.4.2005. It further appears that the said case bearing No. 408 of 2005 ended in the discharge of the accused under Section 245 Cr.PC. The learned Magistrate considered the affidavit filed by the defacto-complainant in the said case wherein it was stated that she was leading her conjugal life happily with her husband. On hearing the defacto-complaint and considering the contentions raised in the affidavit, the learned Magistrate recorded the order of discharge under Section 245 Cr.PC. Subsequently, the instant case bearing Hanskhali P.S. Case No. 281 dated 06.12.2005 was started. The petition of complaint was sent to the P.S. under Section 156(3) Cr.PC and the F.I.R. was registered bearing No. 281 dated 06.12.2005. In the said petition of complaint the occurrence of the alleged offence was after marriage extending up to 24.08.2005. It is, therefore, clear that the period of alleged torture as per the subsequent complaint also includes the period of torture as raised in the earlier complaint which ended in discharge of the accused. By filing the affidavit stating that she was living happily with her husband which enabled the Court to record order of discharge, the defacto complainant put an end to the allegation of torture as raised in the earlier petition of complaint and, as such, the same allegation over the same period cannot be reopened.

6. Secondly, in the second petition of complaint there is no whisper about the contention raised in the earlier complaint and the order of discharge made therein. Mr. Mukherjee in this connection has referred to the decision reported in 2005 SCC (Cri) 1322 para 21 (supra). The observation of the Hon'ble Apex Court made in para 21 of the aforesaid decision is quoted hereunder:

This apart, the respondent did not also disclose the fact in the criminal revision filed before the High Court that he has also been convicted in another Criminal Case No. 202 of 1997 by the Court of Metropolitan Magistrate, Patiala House, New Delhi. Thus, the contesting respondent has come to the High Court with unclean hands and withholds a vital document in order to gain advantage on the other side. In our opinion, he would be guilty of playing fraud on the Court as well as on the opposite party. A person whose case is based on falsehood can be summarily thrown out at any stage of the litigation. We have no hesitation to say that a person whose case is based on falsehood has no right to approach the Court and he can be summarily thrown out at any stage of the litigation....

The observation of the Hon'ble Apex Court made in the decision reported in (2004)7 SCG 166 para 13 (supra) is quoted hereunder:

As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case....

7. Since in the subsequent petition of complaint there is no whisper about the earlier petition of complaint followed by the order of discharge of the accused persons, such non-disclosure amounts to suppression of material facts, inasmuch as, had it not been suppressed, it would have an effect on the merits of the case. Following the ratio of the aforesaid decisions, I find that it is a fit case for quashing of the proceedings in the exercise of the jurisdiction under Section 482 Cr.PC. The application under Section 482 read with Section 300 Cr.PC is allowed. Accordingly; the proceedings of Hanskhali P.S. Case No. 281 'dated 06.12.2005 under Section 498A/34 I.P.C. pending in the Court of learned Additional Chief

Judicial Magistrate, Ranaghat stand quashed.

8. Let a copy of this order be sent to the learned Court below A immediately. Urgent Xerox certified copy of this order, if applied for, be handed over to the parties as early as possible.

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