

Santipada Muhuri Vs. State

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Court : Kolkata

Decided On : Jun-30-2004

Reported in : 2004(4)CHN303

Judge : G.C. De and ;Sankar Prosad Mitra, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 482; ;[Indian Penal Code \(IPC\), 1860](#) - Section 498A

Appeal No. : C.R.R. No. 1785 of 1997

Appellant : Santipada Muhuri

Respondent : State

Advocate for Def. : Asimesh Goswami, Id. Addl. P.P., ;K.J. Ahmed and ;Minati Gomes, Advs.

Advocate for Pet/Ap. : Sekhar Basu, ;Milan Mukherjee and ;S. Ganguly, Advs.;A.K. Biswas, Adv.

Disposition : Application allowed

Judgement :

1. Mr. Santipada Muhuri by this application under Section 482 of the Code of Criminal Procedure has prayed for quashing of the order dated 28.4.97 passed by the Additional Sessions Judge, Islampur, district Uttar Dinajpur in Sessions Case

No. 4/96 arising out of Goalpukur P. S. Case No. 173 dated 23.12.92 corresponding to G. R. Case No. 911 of 1992. By the said order the Additional Sessions Judge framed charge under Section 498A/302 of IPC against Prabir Kumar Muhuri and under Section 498A of the IPC against the present petitioner Santipada Muhuri. Immediately after filing of this application this Court by an order dated 20.6.97 directed service of the application on the opposite party, and ordered that the trial of the accused Santipada Muhuri be separated and the trial against Prabir Kumar Muhuri be proceeded. It was further directed that the trial of Santipada Muhuri in the separate case be stayed till the disposal of this application.

2. In view of the said order dated 20.6.97 the trial against Prabir Kumar Muhuri proceeded and after taking into consideration the evidence on record, the Trial Court came to the conclusion that the prosecution was able to prove the charge under Section 302/498A of IPC against the accused Prabir Kumar Muhuri and he was accordingly sentenced.

3. Against the said order of conviction and sentence the convict Prabir Kumar Muhuri filed an appeal before this Court numbered as C. R. A. No. 172 of 1998.

4. In course of hearing of the said C.R.A. No. 172 of 1998 it was detected that the present application was pending. However, by an order dated 7.5.04 this application was assigned before this Bench for disposal. This Bench in course of hearing of the CRA No. 172 of 1998 took up this application for consideration and by an order dated 19.5.94 directed the Trial Court to inform whether the case against Santipada Muhuri was separated or not. The Trial Court intimated that as the original record was forwarded to this Hon'ble Court in connection with the appeal preferred by the convict Prabir Kumar Muhuri, the record could not be separated in connection with the trial of Santipada Muhuri. Thereafter, this application was also taken up for hearing from 11.6.04 side by side with the hearing of CRA 172/98.

5. After hearing the learned Counsel of both sides and on perusal of the materials on record it appears that on the basis of a written complaint filed by one Shyama Das Ghose on 16.12.92 against one Prabir Kumar Muhuri, the SDJM, Islampur by

his order dated 16.12.92 directed the Inspector General of Police, C.I.D, Bhowani Bhavan, Calcutta to investigate the case after treating the written complaint as FIR. Accordingly, on receipt of the written complaint Goalpukur P.S. case No. 173 dated 23.12.92 was registered under Section 302/ 498A of IPC against Prabir Kumar Muhuri. But ultimately charge-sheet was filed against Prabir Kumar Muhuri under Section 302/498A IPC and under Section 498A against the present petitioner Santipada Muhuri.

6. Mr. Sekhar Basu, learned Counsel appearing on behalf of the present petitioner argued at length and pointed out that there was no element whatsoever against the present petitioner Santipada Muhuri concerning any offence not to speak of any offence under Section 498A of the IPC. It is also argued that the written complaint was an outcome of detailed discussion amongst the complainant party and their lawyers at least after nineteen days from the date of the alleged incident and eight days after the death of the victim. So it is contended that if the present petitioner had any part to play in the alleged offence under Section 498A of IPC that should have been indicated in the FIR. Since the said important fact has not been included in the FIR it can safely be concluded that the allegation against the present petitioner was an afterthought.

7. On the other hand, Mr. Asimesh Goswami, learned Additional Public Prosecutor appearing on behalf of the State contended that when the chargesheet was filed against the present petitioner and charge was framed against him under Section 498A of IPC, it can safely be concluded that there was prima facie case against the present petitioner. It is argued that if the investigation is already concluded by the police and on the basis of which charge was framed, it is not permissible in law to come to a conclusion that there was no material for framing of charge or that there are grounds for quashing of the charge against the present petitioner. Hence, Mr. Goswami, learned A.P.P. has submitted that this application is to be rejected at the very outset.

8. After a careful consideration of the materials on record and submissions made by the learned Counsel on behalf of the parties, it is to be pointed out that the material collected by the police were thrashed out in the evidence adduced by the

prosecution in the trial of Prabir Kumar Muhuri. It is also to be noted that except the evidence adduced in course of the trial there is no other material which can be thrashed out in the trial of the present petitioner Santipada Muhuri. So it is to be noted that the evidence adduced by the parties in the trial of Prabir Kumar Muhuri will also be the evidence against Santipada Muhuri. So, let it be considered whether the post-mortem report so far collected by the police and the materials produced in course of the trial of Prabir Kumar Muhuri are to be taken into consideration for the purpose of disposal of this application under Section 482 Cr. PC.

9. It is already stated that the written complaint was the outcome of a detailed deliberation between the complainant party and their lawyers, and it was drafted taking the specific assistance of two lawyers, namely, Niladri Guha of Sealdah Court and another Sri Manindra Mohan Majumder of Islampur Criminal Court. So, it can be said that all facts were depicted in the written complaint of the de facto complainant and after being satisfied about the contents of the written complaint he signed and filed it before the learned SDJM, Islampur for the purpose of starting a case. At the risk of repetition it is to be stated that there is no whisper or any allegation against the present petitioner Santipada Muhuri as regards any offence not to speak of any element of Section 498A of 1PC. In course of hearing of CRA No. 172 of 1998 it was analysed by this Court that the element of torture or cruelty for non-payment of Rs. 40,000/- was not only afterthought but it was an embellishment. The written dying declaration recorded by the Executive Magistrate on 30.11.92 on the requisition of the complainant party and the S.D.O, Siliguri was not taken into consideration by the I.O. and he did not examine the Executive Magistrate to ascertain the real state of affair. The I.O. also did not examine the doctors or anybody of the hospital though he took charge of the medical papers in course of investigation. The I.O. did not take into notice that on the date of admission of the victim in North Bengal Medical College and Hospital on 27.11.92 there was an endorsement which according to the petitioner was the accidental catching of fire. So, it was incumbent upon the I.O. to examine the attending doctors and other members of the staff of the hospital to ascertain the cause of death of the victim Kakoli.

10. The first I.O. in course of investigation recorded the statement of Bharati Ghose i.e. the mother of the victim on 28.12.92 and uncle of the victim on 8.1.93. These two witnesses claimed that during their visit on 28.11.92 the victim Kakoli disclosed that the husband Prabir Kumar Muhuri and father-in-law Santipada Muhuri started torturing the victim for non-fulfilment of their demand of Rs. 40,000/- for the purpose of purchasing a Motor Cycle for Prabir Kumar Muhuri, the Officer-in-Charge of Goalpukur P.S. They also narrated how the complainant party were humiliated by Prabir Kr. Muhuri as well by his father Santipada Muhuri on different days. They further disclosed that on the date of alleged incident the victim was mercilessly assaulted by her husband Prabir Kumar Muhuri and thereafter kerosene was poured on her person by Prabir Kumar Muhuri and fire was set in with a view to killing her by burning. So the mother of the victim and her uncle claimed before the I.O. that on 28.11.92 they came to know that Prabir Kumar Muhuri attempted to commit murder of Kakoli and Prabir Kumar Muhuri and his father were guilty under Section 498A of IPC. But surprisingly enough till 16.12.92 no attempt was made to inform the police as regards the commission of offence under Section 307 of IPC by Prabir Kumar Muhuri or under Section 498A of IPC by Prabir and his father Saktipada Muhuri. The materials on record further indicate that on the requisition of the uncle of the victim as given to the police on 30.11.92 an Executive Magistrate was sent for recording the dying declaration of the victim. This fact indicates that uncle of the victim had access to the police on 30.11.92. But on that date also the vital information as regards commission of offence under Section 307 IPC or under Section 498A of IPC was not given to the police nor it was indicated to anybody else. Even in the complaint filed on 16.12.92 the demand of money from the end of the present petitioner was also not disclosed. On 28.12.92 and on 8.1.93 the I.O. got information about the involvement of present petitioner, namely, Santipada Muhuri in respect of the offence under Section 498A of IPC. But it is to be noted from the alleged complaint that uncle of the victim met the victim on 28.11.92 and the father and mother of the victim met her on 29.11.92. So the statements made by the mother of the victim i.e. Bharati Ghose and uncle Jawahar Ghose as regards meeting the victim on 28.11.92 and fully contradictory for which no credence can be given. In the judgement of the Appeal Court numbered as CRA No. 172 of 1998, all these facts

were analysed in details by this Bench and it has been concluded that there was no material of Section 498A against the husband Prabir Kumar Muhuri or the father-in-law of the victim, namely, Santipada Muhuri, for which FIR against him is liable to be quashed. So the framing of charge against Santipada Muhuri under Section 498A of IPC on the basis of the materials collected by the I.O. half-heartedly cannot be construed to be dependable nor it can be said that prima facie case has been established against Santipada Muhuri as regards offence under Section 498A of IPC. So considering all these aspects of the matter we are of the view that continuance of the proceeding as against the present petitioner under Section 498A of IPC will be sheer abuse of the process of Court and accordingly to secure ends of justice the entire proceeding against the present petitioner Santipada Muhuri is hereby quashed.

11. This application under Section 482 of the Code of Criminal Procedure is accordingly allowed. Accused Santipada Muhuri is discharged and he is also discharged from his bail bond.

12. Let a copy of this order be sent to the Trial Court for information and necessary action.

13. All interim orders passed by this Court are also vacated. Later:

14. Let urgent certified xerox copy of this judgment be handed over to the learned Advocates for the parties expeditiously if applied for.

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