

Bhairav Roy Vs. Tripti Roy

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Court : Kolkata

Decided On : Sep-30-2003

Reported in : 2004(1)CHN318

Judge : Arunabha Barua, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 2 and 482; ;Indian Penal Code (IPC) - Section 498A

Appeal No. : C.R.R. No. 2324 of 2001

Appellant : Bhairav Roy

Respondent : Tripti Roy

Advocate for Def. : Tarit Kr. Bhattacharyya, Adv.

Advocate for Pet/Ap. : Amjad Ali and ;Md. Galib, Adv.

Disposition : Revision dismissed

Judgement :

Arunabha Barua, J.

1. This revisional application under Section 482 of the Code of Criminal Procedure is directed against an order dated 4.8.2001 passed by the learned Additional Sessions Judge, Kalna, Burdwan, in Criminal Motion No. 87 of 2001 which

affirmed the order passed by the learned Judicial Magistrate, Kalna, Burdwan in C. R. Case No. 133 of 2000 under Section 498A I.P.C.

2. The fact of the matter is over a criminal proceeding under Section 498A of the Indian Penal Code. The wife Tripti Roy instituted the case being G. R. Case No. 143 of 2000 under Section 498A I.P.C., of Monteswar Police Station. After investigation of the case the police submitted the final report in the said G. R. Case. Being aggrieved and dissatisfied with the said final report submitted by the police Tripti Roy submitted a 'naraji' petition and on the basis of the petition, treating the same a petition of complaint the learned S.D.J.M., Kalna, Burdwan took cognizance of the offence on 9.11.2000 and thereafter the learned Magistrate transferred the case of the file to the learned J. M., Kalna. The said case registered as G. R. Case No. 133 of 2000 (T. R. No. 166 of 2000). On 31.1.2001 the learned Magistrate after examining the complainant and one witness found a prima facie case and issued summons against the petitioners under Section 498A of the I.P.C.

3. The husband and others being aggrieved and dissatisfied with the said action by the learned Magistrate preferred the said criminal motion before the learned Additional Sessions Judge and the learned Additional Sessions Judge by his impugned order dated 4.8.2001 dismissed the same and affirmed the order of the learned Magistrate.

4. In the first place, I find from the impugned order of the learned Additional Sessions Judge that it is an order adequately reasoned and there is no error of judgment on the part of the learned Additional Sessions Judge or miscarriage of justice occasioned by it for an inference in this second revision before this Court under Section 482 Cr. P. C. which can only be sparingly used in exceptional cases. To my mind, this one is not an exceptional case to warrant an inference or exercise of jurisdiction by this Court under Section 482 Cr. P.C.

5. In assailing the impugned order dated 4.8.2001 passed by the learned Additional Sessions Judge the main thrust of the argument by the learned advocate the petitioner is with regard to the petition by the wife called a 'naraji' petition. And it is argued that 'naraji' petition cannot be regarded at all as a petition

of complaint in the eye of law since it does not contain the necessary facts of the offence as alleged; or in other words the 'naraji' petition is devoid of the ingredients of a complaint. On the other hand, it is submitted on behalf of the other side that the learned Additional Sessions Judge was correct in his approach to the legal proposition with regard to a 'naraji' petition and the action taken by the learned Magistrate in issuing the summons against the petitioner under Section 498A I.P.C. and that it should be affirmed.

6. Some case laws have been cited, namely : AIR1965 All508 and : 1977 CriLJ1900 .

7. A 'naraji' petition simply means a petition which disapproves of the final report submitted by the police after investigation, here in this case, investigation of the petitioner's complaint of mental and physical torture perpetrated against her by her husband and others.

8. In this case, F.I.R. was lodged by the complainant (naraji petitioner, Tripti Roy, wife of Parthasarathi Roy, the revisional applicant No. 4) on 16.4.2000 and the said complaint before the Officer-in-Charge, Monteswar P. S. had detailed a case of physical and mental torture punishable under Section 498A I.P.C. It had also spelt out that the complainant Tripti Roy was physically and mentally tortured over a dowry demand of Rs. 20,000/- over and above a dowry of Rs. 50,000/- in cash plus gold ornaments and furniture, which were already given at the time of marriage. The police submitted the final report and S. I., S. K. Ghosh of Monteswar P. S. who investigated the case said in his report that it was not a fact of torture upon the housewife and accordingly submitted that final report.

9. The complainant or the housewife who was allegedly tortured physically and mentally then made the instant 'naraji' petition before the learned S.D.J.M., Kalna with the allegation that in the said case being G. R. Case No. 143 of 2000, in respect of which a final report has been given had been a product of collusion between the police and the accused persons and that she protested to the said investigation made by the police resulting in the final report and she wanted the case to be investigated afresh by a higher police officer and she further prayed for justice so that the culprits, that is the accused persons in the case that she had

brought, viz., G. R. Case No. 143 of 2000, be punished.

10. It may possibly be borne in mind that a 'naraji' or a protest petition is no complaint proper by itself but is treated (emphasis mine) as a complaint. The original complaint along with the F.I.R. made by the complainant, Tripti Roy, was already there detailing the story of physical and mental torture and making out a case under Section 498A I.P.C. for which the investigation had started. Cognizance was taken by the learned Magistrate on the 'naraji' petition which was treated as a complaint. Materials were already there before the learned Magistrate to give application of his mind to the allegations made by the complainant, Tripti Roy. The 'naraji' petition also specifically referred to the case in question being G. R. Case No. 143 of 2000 in which the final report was submitted and by which the wife was aggrieved and which also she is approved and prayed for fresh investigation and penal action against the accused persons in that case in view of the allegations or complaint he made in connection with that case. So, the 'naraji' or protest petition could be treated as a complaint and cognizance could be rightly taken on the 'naraji' petition which was inextricably entwined with the complaint proper in the form of F.I.R. in connection with the G. R. Case No. 143 of 2000 which was specifically referred to in the said 'naraji' petition itself and in respect of which the final report was submitted and which precisely were all before the learned Magistrate to apply his mind on a complaint and his taking cognizance and then for examination of the witnesses following the enquiry which he did rightly and which rightly resulted in the issuance of process against the accused persons under Section 498A I.P.C.

11. Complaint has been defined in Section 2(d) Cr. P.C. to say that it may be any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. Now, in order to be a complaint the petition must contain allegations of an offence and also a prayer for judicial action thereon. A protest petition is treated as a complaint provided an application of judicial mind is possible on the allegations and commission of offence, with a view to taking an action under the Code of Criminal Procedure and also stating that any person whether known or unknown has committed an offence. It may also be

borne in mind that when 'complaint' has been defined in the Code it admits of liberal interpretation to secure the ends of justice.

12. I think, there is no illegality in the impugned order dated 4.8.2001 passed by the learned Additional Sessions Judge, Kalna, Burdwan. Accordingly, the said order is hereby affirmed. The instant revisional application has no merits and is hereby dismissed. The case in question before the learned Judicial Magistrate, Kalna, Burdwan, under Section 498A I.P.C. against the accused persons be proceeded with in accordance with law and be disposed of expeditiously.

13. Let a copy of this order be sent down to the learned Courts below.

14. Urgent xerox certified copy of this order, if applied for, be given to the parties.

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