

Calcutta High Court

Suraj Yadav And Anr. vs State Of West Bengal And Anr. on 13 March, 2007

Equivalent citations: I (2008) DMC 314

Author: B Somadder

Bench: B Somadder

JUDGMENT Biswanath Somadder, J.

1. This is an application under Section 482 of the Code of Criminal Procedure for question of the proceeding, bearing B.G.R. Case No. 1010/2003 which arose out of Tiljala Police Station Case No. 82 dated 20th March, 2003 under Sections 498A/109 of the Indian Penal Code (for short, the Code) pending before the Court of learned Sub-Divisional Judicial Magistrate, Alipore, against the petitioners.

2. The facts of the case, in brief, are as follows:

(i) The petitioners are neighbours of Soma Mondal, being the complainant in the instant case. Soma Mondal on 20th March 2003 lodged a complaint with the Officer-in-Charge of Tiljala Police Station alleging inter alia of torture perpetrated by her husband Nemaï Mondal. She further alleged that on the day of 'Holi' at 8.30 a.m. her husband Nemaï Mondal and the petitioners herein used filthy language and assaulted her for which she was sent to the hospital from the Police Station. In the said complaint it was further alleged that she could not come out of her house out of fear of them and she was, at the time of complaint, living at her paternal home with her 11/2 years old daughter. She also alleged that the petitioners herein were responsible for diverting her husband (Nemaï Mondal) to immoral activities.

(ii) The petitioner No. 1 (being the husband of the petitioner No. 2), along with the husband of the complainant was arrested by the police on 20th March, 2003 and produced before the learned Sub-Divisional Judicial Magistrate, Alipore, on 21st March, 2003. On that day itself, the learned Sub-Divisional Judicial Magistrate, Alipore, was pleased to grant bail to the petitioner No. 1.

(iii) Subsequently, the petitioner No. 2 also surrendered on 24th March, 2003 and was granted bail, she being on the same footing as the petitioner No. 1.

(iv) The investigating agency thereafter completed investigation and submitted a charge-sheet being C.S. No. 88 dated 14th April, 2003 under Sections 498A/109 of the Code against: (i) Nemaï Mondal being the husband of the complainant, (ii) Suraj Yadav (being the petitioner No. 1 herein), and (iii) Smt. Soma Yadav (being the petitioner No. 2 herein). Thereafter, the instant application under Section 482 of the Code of Criminal Procedure was filed before this Court by the petitioner Nos. 1 and 2.

3. Learned Advocate appearing on behalf of the petitioners submitted that the petitioners have been falsely implicated in the said case since they were in no way connected with the commission of the alleged offences at all. He submitted that in the facts and circumstances of the case, the proceedings against the petitioners may be quashed.

4. In order to appreciate the contention of the learned Advocate of the petitioners, it is necessary to look into the facts of the instant case in some detail as also the law under which the petitioners are charged in respect of offences committed under the provisions of the Code.

5. Before I discuss the law, I shall advert to certain facts which form the genesis of the charge against the petitioners.

6. As stated hereinbefore, the complainant is the wife of one Nemai Mondal. The petitioners are neighbours and friends of the complainant's husband. They are not relatives of the husband. The complaint made before the Tiljala Police Station by the complainant on 20th April, 2003 indicates about one single incident which occurred on the day of 'Holi'. It has been alleged by the complainant that the petitioners on the day of 'Holi' assaulted her on the road and verbally abused her. That apart, she also alleged, that she could not come out on the road because of fear of the petitioners and that the petitioners were responsible for leading her husband astray. These constitute the specific allegations made by the complainant, as against the petitioners. The rest of the allegations are against her husband, Nemai Mondal.

7. The charge-sheet No. 88 dated 14th April, 2003 is in respect of offence under Sections 498A/109 of the Code as against the husband of the complainant as well as against the petitioners herein. The relevant sections of the Code are quoted herein below:

Sec. 498A. Husband or relative of husband of a woman subjecting her to cruelty--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation--For the purpose of this section, 'cruelty' means-

(a) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Section 109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

8. For the purpose of our case, we also need to look into the statutory definition of the word, "abetment". The definition of the word "abetment" may be found under Section 107 of the Code:

Section 107. Abetment of a thing--A person abets the doing of a thing, who-

First--Instigates any person to do that thing; or Secondly--Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly--Intentionally aids, by any act or illegal omission, the doing of that thing.

9. The issue that comes up for consideration in the instant case is whether the FIR dated 20th March, 2003 discloses any offence committed by the petitioners herein under Sections 498A/109 of the Code, based on which the charge-sheet was finally submitted by the investigating agency.

10. To find the answer, one may refer to the contents of the complaint dated 20th March, 2003, which has been discussed in detail hereinbefore. From a plain reading of the same it would appear that the complainant does not allege anywhere that the petitioners were relations of her husband. Thus, there could be no allegation of offence under Section 498A of the Code, against the petitioners.

11. So far as the charge of "abetment" of an offence under Section 498A of the Code is concerned one can turn to the statute itself. Section 107 of the Code has already been set out hereinbefore. The Hon'ble Supreme Court in the case of *Shri Ram v. The State of U.P.*, inter alia held as follows:

Section 107 of the Indian Penal Code which defines abetment provides to the extent material that a person abets the doing of a thing who intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 2 to the section says that whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act. Thus, in order to constitute abetment, the abettor must be shown to have 'intentionally' aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But, unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and, therefore, active complicity is the gist of the offence of abetment under the third paragraph of 107.

12. The complaint dated 20th March, 2003 does not have any ingredient whatsoever so as to disclose the fact that the petitioners "intentionally aided" (emphasis supplied) the commission of an offence under Section 498A of the Code. Therefore, the only thing that remains to be decided is whether this is a fit case for quashing of the proceeding pending before the Court of the learned Sub-Divisional Judicial Magistrate, Alipore, as against the petitioners herein.

13. The Hon'ble Supreme Court in the case of *Madhavrao Jiwarelkar v. Sambhajirao Chandrojirao Angre*, held as follows:

...The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage....

14. The law thus makes it clear that even at the preliminary stage, the High Court can intervene under certain special circumstances and quash the proceeding pending before the trial Court. In the facts of the instant case, however, even that preliminary stage is over. A charge-sheet has already been submitted by investigation agency, after due completion of investigation. Nothing incriminating has been found against the petitioners. Apart from the complaint dated 20th March, 2003, there is no other material evidence disclosed against the petitioners, subsequently by the investigating agency, at the time of filing of the charge-sheet on 14th April, 2003.

15. For reasons stated and discussed above, I have no hesitation in holding that the proceeding against the petitioners, under Sections 498A/109 of the Code, cannot be sustained and this is a fit case where the Court in exercise of its inherent powers under the Code of Criminal Procedure, ought to intervene. As a result, this application is allowed. The proceeding, being B.G.R. Case No. 1010/2003 which arose out of Tiljala Police Station Case No. 82 dated 20th March, 2003 under Sections 498A/109 of the Code pending before the Court of learned Sub-Divisional Judicial Magistrate, Alipore, thus stands quashed as against the petitioners.