

5.2016.  
l.b.

CRR 2387 of 2011

Mr. Ayan Bhattachrya,  
.....for the petitioner.  
Mr. Sabir Ahmed.  
.....for the State.

The petitioners have challenged the order dated May 23, 2011 passed by learned Additional Chief Judicial Magistrate, Sealdah in G.R. No.2708 of 2008 arising out of Chitpur Police Station Case No.221 dated November 10, 2008 under Sections 498A/114 of the Indian Penal Code, by which learned Magistrate refused to discharge the petitioners under Section 239 of the Code of Criminal Procedure.

It appears from the materials on record that the opposite party no.2 filed a petition of complaint before the court of learned Additional Chief Judicial Magistrate, Sealdah which was referred to the Officer-in-Charge of Chitpur Police Station for registration of FIR. It is alleged in the said complaint that the husband and parents in law of the opposite party no.2 physically assaulted and mentally tortured the opposite party during her stay in the matrimonial home for demand of more dowry. It is also alleged that the husband of the opposite party no.2 physically assaulted and mentally tortured her when she protested against the illicit relationship of her husband with another lady. On the basis of the complaint filed by the opposite party no.2, the criminal case was started at Chitpur Police Station and the said case was investigated and charge sheet was

submitted in the court of learned Magistrate. The petitioners are parents in law of the opposite party no.2. They filed an application before the court of learned Magistrate praying for their discharge under Section 239 of the Code of Criminal Procedure on the ground that sufficient evidence is not collected by the investigating agency to prosecute them for the offence under Section 498A of the Indian Penal Code. Learned Magistrate refused to discharge the petitioners from the criminal case by passing an order on May 23, 2011 which is under challenge in this revision.

Relying on the decision of the Supreme Court in “Chandrakha v. State of Rajasthan” reported in (2013) 14 SCC 374, Mr. Ayan Bhattacharya, learned counsel for the petitioners submits that there is no specific allegation against the present petitioners either in the written complaint treated as FIR or in the statement of the witnesses recorded under Section 161 of the Code of Criminal Procedure and no specific role of the petitioners is attributed in the said statement of the witnesses and as such, no prima facie case is made out against the petitioners for framing of the charge under Section 498A of the Indian Penal Code.

Mr. Sabir Ahmed, learned counsel representing the State has referred to the statement of the witnesses recorded under Section 161 of the Code of Criminal Procedure and the written complaint treated as FIR and submitted that the present petitioners supported the action of the husband of the opposite party no.2 and instigated the husband of the opposite party no.2 in inflicting torture upon the opposite party no.2 while she was staying at the matrimonial home.

According to Mr. Ahmed, sufficient evidence is available to prosecute the petitioners for the offence under Section 498A of the Indian Penal Code.

Having heard the learned counsel representing the respective parties and on consideration of the written complaint treated as FIR, I find that the opposite party no.2 was physically assaulted and mentally tortured by her husband when she protested against the illicit relationship of her husband with another lady. The contents of the written complaint treated as FIR disclose that the present petitioner being parents in law of the opposite party no.2 supported physical and mental torture of the opposite party no.2 by her husband. It is also alleged in the complaint that the petitioners instigated the husband of the opposite party no.2 in committing the crime. On scrutiny of the statement of witnesses like Sekhar Kar, Ramesh Saha and Shankar Roy recorded under Section 161 of the Code of Criminal Procedure, I do not find that the opposite party no.2 was subjected to torture by the present petitioners. However, on close scrutiny of all the statement of the witnesses recorded under Section 161 of the Code of Criminal Procedure and on consideration of the allegation made in the written complaint treated as FIR, I do not find any specific role attributed to the present petitioners in inflicting mental torture or physically assault on the opposite party no.2. The allegation made against the present petitioners are vague and general in nature. On similar facts situation of the case of “Chandralekha v. State of Rajasthan” reported in (2013) 14 SCC 374, the Supreme Court quashed the criminal proceeding against the parents in law of the victim. By following the said case of “Chandralekha v. State of Rajasthan” (supra), I would like to hold that the

allegations made against the present petitioners are not sufficient to frame charge against them under Section 498A of the Indian Penal Code. However, the allegations made against the husband of the opposite party no.2 are sufficient to prosecute him for the offence under Section 498A of the Indian Penal Code.

In view of my above findings, I am of the view that the order passed by learned Magistrate is not justified under the law. As a result, order dated May 23, 2011 passed by learned Additional Chief Judicial Magistrate, Sealdah in G.R. No.2708 of 2008 is set aside. The petitioner Rabindra Kumar Pramanik and the petitioner Arati Pramanik are discharged from G.R. Case No.2708 of 2008. Learned Additional Chief Judicial Magistrate, Sealdah is directed to proceed against the other accused person in G.R. No.2708 of 2008 in accordance with law.

With the above direction, the criminal revision is disposed of.

Let a copy of the order be sent down to the learned court below for favour of information and necessary action.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible.

(R. K. Bag, J.)