

**In the High Court at Calcutta
Criminal Revisional Jurisdiction**

**Present:
The Hon'ble Justice Asha Arora**

C.R.R 2900 of 2016

- 1. Sukhamay Mondal**
- 2. Smt. Kanaklata Mondal**
- 3. Smt. Lipika Sikdar**
- 4. Smt. Sutapa Mondal**

.....**Petitioners**

Versus

- 1. The State of West Bengal**
- 2. Smt. Kakoli Mondal**

..... **Opposite Parties**

For the Petitioners : Mr. Biswaranjan Bhakat, advocate
Mr. Tarun Kumar Jana, advocate

For the State : Ms. Anasuya Sinha, advocate

**For the Opposite
Party no. 2** : Mr. Ranadeb Sengupta, advocate
Mr. Anindya Ghosh, advocate

Heard on : 17/7/2018, 23/7/2018
Judgement on : **6th August, 2018.**

Asha Arora, J.:

The petitioners filed an application under section 239 CrPC before the learned Judicial Magistrate 1st Court Barasat in G.R. Case No. 2160 of 2010 for discharging them from the aforesaid case under section 498A/323 IPC. After hearing the learned counsel for the parties, the trial Court, by a reasoned order

dated 24/5/2016 rejected the said application and posted the case for framing of charge.

Aggrieved, the petitioners have assailed the impugned order by the present revisional application.

Learned counsel appearing for the petitioners strenuously argued that the materials on record do not support the allegation for the offences under section 498A/323 IPC against the petitioners. Mr. Bhakat pointed out that at the instance of the opposite party No. 2 herein the criminal proceeding being G.R Case No. 2160 of 2010 under section 498A/323 was initiated against the petitioners which culminated in the submission of the charge-sheet. In the aforesaid proceeding, in her petition of complaint filed on 18/5/2010 the wife/opposite party No. 2 alleged that on 25/3/2010 she was assaulted and driven out of her matrimonial home by the accused/petitioners herein whereas in her application under section 125 CrPC filed on 7/2/2004 before the learned Chief Judicial Magistrate Barasat registered as M. Case No. 62 of 2004 the wife/opposite party no. 2 alleged that she was driven out of her matrimonial home in the year 1998 and since then she has been residing separately.

Learned counsel for the petitioner sought to impress that there is no averment anywhere in the petition of complaint that after being driven out in the year 1998 the opposite party no. 2/ defacto complainant was reunited with her husband (petitioner no. 1 herein) and thereafter she was driven out again from her matrimonial home in the year 2010. It has further been pointed out that by an order dated 24/11/2009 passed in a proceeding under section 127 CrPC the amount of maintenance was enhanced from Rs. 1500/- per month to Rs. 5000/- per month and the opposite party no. 2/defacto complainant had been receiving the said enhanced amount of maintenance. Mr. Bhakat argued that as the defacto complainant/opposite party no. 2 has been residing separately since 1998, the impugned criminal proceeding of the year 2010 is entirely false and vexatious instituted with a view to harass the petitioners. The learned Magistrate was therefore not justified in rejecting the petitioners' prayer for discharging them from the impugned proceeding. Learned counsel appearing for the State countered that the materials collected during investigation including the statement of the defacto complainant and her daughter recorded under section 161 CrPC make out a prima facie case against the petitioners.

According to the petition of complaint filed by the opposite party no. 2/defacto complainant Kakoli Mondal, the petitioner no. 1 is the husband of the defacto complainant/ opposite party no. 2 while the petitioner nos. 2 and 4 are her mother-in-law and sister-in-law respectively. The petitioner no. 3 is allegedly in an illicit relationship with the petitioner no. 1. The main allegation against the petitioners is that on 25/3/2010 the petitioner no. 1 being influenced by his “kept” Lipika Sikdar (petitioner no. 3) and the petitioner no. 4 assaulted the complainant and the petitioner no. 2 came and joined them. Thereafter they all drove the complainant out of the house along with her daughter.

At this juncture it would be significant to advert to the relevant provisions in the Criminal Procedure Code regarding discharge of accused and framing of charge. Section 227 CrPC deals with the provision for discharge of the accused and Section 228 CrPC relates to framing of charge in a Sessions triable case. For the purpose of the impugned criminal proceeding which is a warrant case triable by a Magistrate, the relevant provisions for discharge of accused and framing of charge are Section 239 CrPC and Section 240 CrPC.

Section 239 CrPC reads as follows:

“239. When accused shall be discharged.---- If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

Section 240 CrPC provides as follows:

“240. Framing of charge.----(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.”

It is well settled that the Court while framing charge should apply the prima facie standard. The test to determine prima facie case would depend upon the facts of each case. At the stage of framing charge or while considering the discharge petition it is not for the Magistrate or the Judge to hold a roving

enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. The Court is required to find out if the facts emerging from the materials on record taken at their face value constitute the alleged offence.

The impugned criminal proceeding was initiated on the basis of a petition of complaint under section 498A IPC of the defacto complainant Kakoli Mondal (opposite party no. 2 herein) against the petitioners herein and one Avijit Sikdar mentioned in the complaint as the son of the petitioner no. 3. Investigation culminated in the submission of the charge-sheet under section 498A/323 IPC against the present petitioners while Avijit Sikdar, named as the accused no. 5 in the petition of complaint was not charge-sheeted for want of sufficient evidence.

Upon perusal of the petition of complaint and the case diary including the statement of the defacto complainant and her daughter Sudhriti Mondal recorded under section 161 CrPC it appears that the allegations therein do not prima facie constitute an offence under section 498A/323 IPC against the petitioner nos. 2, 3 and 4. There is no specific and categorical allegation that the petitioner nos. 2 and 4 subjected the defacto complainant to cruelty within the meaning of section 498A IPC. Vague and unspecific allegation is certainly not

sufficient to frame a charge under Section 498A/323 IPC against the petitioner nos. 2, 3 and 4. The offence under Section 498A IPC relates to cruelty by husband or relatives of the husband. The allegation in the petition of complaint does not disclose that the petitioner no. 3 Lipika Sikdar is the relative of the husband (petitioner no. 1) within the meaning of Section 498A IPC which has therefore no application to this petitioner. Simply put, the uncontroverted allegations as made out against the petitioner nos. 2, 3 and 4 do not prima facie establish the offences under Section 498A/323 IPC. In the circumstances, continuance of the impugned criminal proceeding against the petitioner nos. 2, 3 and 4 would be an abuse of the process of Court. Though the materials on record are not sufficient to make out a prima facie case under Section 498A/323 IPC against the petitioner nos. 2, 3 and 4, it cannot be said that there is no prima facie case for proceeding against the petitioner no. 1 (husband of the defacto complainant).

Considering the facts and circumstances of the case and the materials on record, I am constrained to hold that the impugned criminal proceeding is yet another instance of blatant misuse of a well intentioned provision of law which was introduced for safe-guarding the interests of a married woman against an

unscrupulous husband and his relatives. It is obvious that for wreaking vengeance on her husband the complainant has roped in her mother-in-law and sister-in-law simply to harass them. The complainant's oblique motive is evident from the fact that she did not hesitate to implicate the son of the petitioner no. 3 as an accused in her petition of complaint though there is no allegation against him anywhere in the four corners of the petition of complaint or in the case diary. This is a case of manifest abuse and misuse of the provisions of section 498A IPC by a vindictive wife. It is evident that the complainant/wife has abused the privilege of law to settle scores with her husband when countenanced with a strained marriage. Petitioner nos. 2, 3 and 4 appear to have been roped in by the wife with mala fide intention only to put pressure upon the husband.

For the reasons aforesaid, the application being CRR 2900 of 2016 is allowed in part.

The petitioner nos. 2, 3 and 4 are discharged from G.R. Case no. 2160 of 2010 pending before the learned Judicial Magistrate 1st Court at Barasat.

The petitioner no. 1 Sukhamoy Mondal shall face the trial and the learned Magistrate shall expedite the hearing of the above mentioned case against the

petitioner no. 1 and dispose of the same in accordance with law without being influenced by any observation made hereinabove.

It is made clear that this Court has considered the matter only from the stand point whether the petitioners shall be discharged or not and has not expressed any opinion on the merits of the case.

The revisional application is thus disposed of.

Interim order, if any, stands vacated.

A copy of this order be sent forthwith to the trial court.

Urgent photostat certified copy of this order, if applied for, shall be furnished to the applicant upon compliance of requisite formalities.

(Asha Arora, J.)