

Criminal Revision
Present: **The Hon'ble Justice Ashim Kumar Roy**
Judgment on: 03.03.2010
C.R.R. No. 3119 of 2008
With
CRAN No. 349 of 2010
Sadhana Banerjee & Ors.
versus
The State of West Bengal & Anr.

Point:

QUASHING: Contradiction about the date of alleged occurrence - Whether criminal proceeding can be quashed-Code of Criminal Procedure, 1973 S. 482.

Fact: The petitioner by filing the instant application prayed for quashing of a charge-sheet under Sections 498A/406/34 of the Indian Penal Code on the ground that the date of the alleged incident mentioned in the application for maintenance under Section 125 of the Code of Criminal Procedure and the date mentioned in the complaint are different.

Held:

If there is any contradiction about the date of alleged occurrence, that being a pure question of facts, essentially the defence of the accused cannot be gone into at this stage, when this Court is considering the question of quashing of a complaint. (Paragraph – 4)

For Petitioners : Mrs. Pronoti Goswami

For State : Mr. Swapan Kumar Mullick

The Court: Invoking Section 482 of the Code of Criminal Procedure the petitioners have moved this criminal revision seeking quashing of the charge-sheet under Sections 498A/406/34 of the Indian Penal Code relating to G.R. Case No. 1359 of 2008 now pending before the Learned Chief Judicial Magistrate, Barasat, arising out of Ashok Nagar P.S. Case No. 186 dated 2.7.2008.

2. In support of this application it was vehemently contended although according to the averments made in the application for maintenance under Section 125 of the Code of Criminal Procedure, the husband and the wife were living separately, since August 6, 2007, but in the petition of complaint the date of the alleged incident has been mentioned as August 7, 2007 and May 14, 2008. It was further contended that all the stridhan articles have been returned.

3. However, having gone through the petition of complaint, I find it is the categorical case of the complainant that she was driven out from her matrimonial home after being subjected to cruelty on August 7, 2007. Thereafter on May 14, 2008, when she again returned to her matrimonial home accompanied by her parents, the accused persons abused them and assaulted her on demand of a motor cycle and a gold chain for the accused no. 1.

4. In view of above, it cannot be said that no occurrence has been allegedly taken place either on August 7, 2007 or on May 14, 2008. Moreover, if there is any contradiction about the date of alleged occurrence, that being a pure question of facts, essentially the defence of the accused cannot be gone into at this stage, when this Court is considering the question of quashing of a complaint. The submissions that there has been a delay of about one year in lodging the FIR and all stridhan have been returned to her, also being the question of facts cannot be gone into at this stage. I also find from the examination of the evidentiary materials collected by the police during investigation the alleged offences have been made out.

5. This criminal revision has no merit and accordingly stands dismissed.

6. It will be open to the petitioners to raise all the points during the trial in support of their defence.

7. In view of dismissal of the main criminal revisional application, the application for extension of interim order being CRAN No. 349 of 2010 also stands dismissed.

8. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)