

CRIMINAL REVISION

Present: **The Hon'ble Justice Ashim Kumar Roy**

C.R.R. No. 403 of 2010

Judgment On: 31-03-2010.

Bimal Kumar Jana

versus

The State Of West Bengal

POINTS:

QUASHING -F.I.R. lodged after the institution of a suit for restitution of conjugal rights- Allegations made 12 years after marriage-Sufficient material to show complicity in the commission of offence against the petitioner-Court, after considering the evidentiary materials collected during the preliminary investigation, whether can quash the F.I.R.- Code of Criminal Procedure, 1973 S.482

FACTS:

The petitioner has approached this Court for quashing of the First Information Report filed against him on the grounds that the aforesaid F.I.R. was lodged after the institution of a suit for restitution of conjugal rights by the present petitioner, these allegations have been made 12 years after the marriage and there is no allegation of offence punishable under Section 494 of the Indian Penal Code.

Vehemently opposing the prayer for quashing it was submitted that sufficient material was collected against the petitioner to show his complicity in the commission of an offence punishable under Section 498A of the Indian Penal Code, but there is no material to make out an offence punishable under Section 494 of the Indian Penal Code.

HELD:

It clearly transpired that his wife was subjected to cruelty by the petitioner even after 12 years of marriage. It further appeared that almost on all the days he used to return home under the influence of liquor and to assault his wife mercilessly and maintained illicit affairs with many girls. Having considered the evidentiary materials so far collected during the preliminary investigation, it cannot be said that no offence has been made out against the present petitioner.

Paras-3&4

For Petitioner: Mr. Gurupada Das

For State: Mr. Sobhendu Sekhar Roy

THE COURT:

1. The present petitioner who has been arraigned under Sections 498A/494 of the Indian Penal Code in connection with a First Information Report registered at Pathar Pratima Police Station has approached this Court for quashing of the same on the following grounds;

(a) The aforesaid F.I.R. was lodged after the institution of a suit for restitution of conjugal rights by the present petitioner.

(b) These allegations have been made 12 years after the marriage and,

(c) There is no allegation of offence punishable under Section 494 of the Indian Penal Code.

2. Heard Mr. Gurupada Das, the Learned Counsel appearing for the petitioner as well as Mr. Sobhendu Sekhar Roy, the Learned Counsel appearing for the State. Perused the Case Diary produced by Mr. Roy.

3. Mr. Roy, Learned Counsel for the State, vehemently opposed the prayer for quashing and submitted sufficient materials have been collected against the petitioner to show his complicity in the commission of an offence punishable under Section 498A of the Indian Penal Code, but in his usual fairness conceded that there is no material to make out an offence punishable under Section 494 of the Indian Penal Code. Mr. Roy drew the attention of this Court to the statements of son, daughter and two neighbours of the petitioner and submitted from their evidences it clearly transpired that his wife was subjected to cruelty by the petitioner even after 12 years of marriage. It further appeared that almost on all the days he used to return home under the influence of liquor and to assault his wife mercilessly and maintained illicit affairs with many girls.

4. Now, having considered the evidentiary materials so far collected during the preliminary investigation, it cannot be said that no offence has been made out against the present petitioner.

5. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

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

(Ashim Kumar Roy, J.)