Gr 2375/16

21/01/17

On 22 February 2006 a wife aggrieved by her husband and in-laws lodged a written complaint with Srirampur police station, alleging the dishonour of sections 307/448/498A/342/506 of the Penal Code and section 4 of the Dowry Prohibition Act.

In the second half of July 2016 the investigation came to an end with police managing to find incriminating evidential materials only against the husband and his two sisters. The father-in-law, the husbands of the two sisters and a lady by the name of Malati were given a clean chit by the investigating officer. The mother-in-law ceased to be within the powers and jurisdiction of the state instrumentalities of this world since 2010 when she stepped into the other side of life.

The wife is presently dissatisfied with the chargesheet on two counts – reduction in the number of accused persons and effacing of the serious offences including that of attempted murder. Her protest petition, which was heard *in extenso* on the 16th of this month, comes with two prayers in the alternative: this court take cognizance against all the accused persons under all the sections as mentioned in the written complaint/formal FIR, or, direct further investigation into the allegations.

Before I proceed further, a legitimate query which may logically trouble a reasonably inquisitive mind ought to be addressed at this juncture. How can this court in ostensible violation of the territorial divisions and consequent jurisdictional separations to be found in the processual law, assume authority over a proceeding which owes its origin and pledges its passage from infancy to geriatric maturity to a different subdivision of a different district? The answer to this is to be found in the order passed by the honourable High Court at Calcutta in CRR 179 of 2016. While disposing of the wife's application under sections 401/482 of the Code of Criminal Procedure, the honourable High Court was pleased to direct inter alia transfer of this case from the file of the learned Additional Chief Judicial Magistrate, Srirampur, to this court.

For the sake of coherent exposition with helpful ease I propose to take up first the prayer for further investigation. This part of the accuser's prosecutorial effort seems to have been generated by the omission of section 307 (IPC) from the chargesheet. After going through the written complaint, the prospective evidence midwifed by the investigation and the telling attendant circumstances that have raised their heads through the chinks, cracks and crevices of the accuser's allegations, I should say with conviction that the investigating officer was not in error in this regard.

A singular incident said to have been enacted in the night between 31 December and 1 January (of 2006), if it had material support in the form of documents and human agency, and, if it were not open to charges of dubiety and scepticism generated by subsequent act and conduct (of the wife), could have had provisionally animated section 307. But this was not to be.

According to the de facto complainant, in that particular night the husband assaulted her, tried to kill her by strangulation and then dragged her inside the kitchen, opened the gas connection and attempted to set her ablaze. The paragraph in the written complaint devoted to this species of allegation ends with the further assertion that in the morning (of 1 January), the husband again severely assaulted the wife on her face and belly.

While the allegations of physical assault could be given investigational support and hence the consequent slapping of section 323 of the Penal Code, the accusations of strangulation and attempted human incendiarism must fail primarily because: except the wife no one would support the story. In the facts and circumstances of the present case the non-availability of independent witnesses has damaging consequences which in other cases may have had a very limited role to play. The wife is a member of the Indian Administrative Service and at that relevant time was the sub-divisional officer of Srirampur. The incident is alleged to have taken place at her official residence. It is common knowledge as well as investigational finding that official residences of high functionaries in the district administration are kept under vigil at night and day. In addition to guards and sentries the presence of domestic help inside the residence cannot be ruled out

in the case of the present accuser. Despite these potential testimonial possibilities when the investigating officer fails to pinpoint a single person ready to subscribe to the major story of attempted murder and when the accuser herself does not name any such person, one cannot discard the act of omitting section 307 from the chargesheet as manifestation of poor investigation.

Continuing the discussion in the same vein, if the incident as alleged were true it is but reasonable to expect that the wife should have had lodged a complaint with the police on the following day or immediately thereafter. But we do not have any such complaint before 22 February 2006.

Again, the subsequent acts of the wife in going to meet her in-laws on 7 January 2006 and thereafter, accompanying her husband for a trip to Alwar on 19 January (of the same year), militate against the plightful claim of being the victim of an attempt at murder.

Lastly, the accusations of severe and continuous physical assaults in that particular night are not supported by any medical papers. The imputed severity of the alleged assaults should have compelled the wife to seek medical attention within a day or two of the commencement of 2006; but there is no assertion in this regard; the wife does not say that she had to seek medical treatment in Srirampur because of the nocturnal incident. We have copies of medical papers purportedly issued by a hospital in New Delhi but these documents do not tend to relate either to Srirampur or to the night heralding the New Year. The de facto complainant and her learned counsel are in error in contending that the investigating officer had not considered these medical papers. Of course he did and that is why we have section 323 of the Penal Code against the husband. The officer may not have examined the doctors who had treated the de facto complainant in New Delhi but this per se is no ground for serious and meaningful cavil.

The learned counsel for the de facto complainant would bank upon an agreement that had been entered into by and between the spouses on 4 March 2006. Drawing my attention to this document, the learned counsel would contend that the accused husband has admitted the commission of all the offences that were imputed to

him and his family in the two written complaints (one was before the police station in New Delhi) authored by his wife. From this, it would be argued that in the face of such admission it was improper for the investigating officer to delete section 307 as well as the five names from the chargesheet.

There is a recital in the agreement which records that in all the previous meetings for rapprochement the husband had admitted that the wife was mentally and physically harassed and also that the contents of the two written complaints were true without any element of exaggeration. These few lines, if one considers them minutely, were not extrajudicial admissions before the witnesses to the document. They were, in the mould and spirit of true recitals, mere recordings of past acknowledgements – hearsay at its best. The investigating officer was prudent in not taking them into consideration.

The learned counsel for the de facto complainant was critical of the investigating officer on the pretext that he had not taken note of the written complaint that had been lodged with Delhi police prior to the initiation of the instant case. The case diary however speaks otherwise – it not only falsifies this charge but also smashes to smithereens the accusation of attempted murder. A copy of this written complaint (of 24 January 2006) authored by the wife and addressed to Delhi police, along with a few other documents, was seized by the investigating officer on 28 June 2016. This written statement by the wife being the first in point of time always had a crucial role to play in the matter of evaluating her subsequent statements which have clearly exhibited a distinct pattern of ever-increasing embellishment. Postponing for the moment the discussion regarding the general effect of the first statement, I would now exhibit its lethality quoad the applicability of section 307.

The first written complaint is in three pages but nowhere within its boundaries is to be found the story of the night between 31 December and 1 January which has subsequently found a place in the documentary progenitor of the instant case. The wife would only state to Delhi police in the passing that on 31 December 2005 the husband had physically abused her by slapping. In view of this telling discrepancy between the first version and the later, I should

be relieved of the task of further peroration regarding this issue. But at the same time in the backdrop of the first written complaint one could not honestly rely upon the subsequent statements by the wife which, as already noticed, suffer from the vices of calculated detailing, self-serving embellishments and imputations of imaginary yet sinister conduct.

Once the deletion of section 307 of the Penal Code is satisfactory explained on the contextual backcloth of the investigation materials, the prayer for further investigation becomes practically meaningless. But before I move onto the next segment of my discussion it should be proper to dispose of a minor point that was raised on behalf of the de facto complainant.

There is a letter in the case diary seen to be signed by the de facto complainant and dated 21 March 2006. This missive to the Inspector in charge of Srirampur police station, after mentioning the agreement of 6 March (supra), requests the latter to “adjourn the investigation sine die” till further information. According to the learned counsel for the de facto complainant, this letter was never sent by his client; it is a forged document. I do not believe in this bald assertion. First, there is no intelligible explanation as to why someone would take the trouble of forging this letter. Secondly, the document mentions the agreement and also encloses a copy of it. Lastly, the letter is the most normal and natural consequence of the agreement. The spouses had agreed to give a second chance to their nuptial life and in this context it is but natural that they would have had wished non-interference by police. One must mention in this regard that the case diary also contains a similar letter (of 17 March 2006) addressed to the Inspector in charge by the husband which also relies upon and conveys a copy of the same agreement.

The time is now ripe to move on to the other prayer by the wife. A holistic reading of the materials ensconced within the folds of the case diary point to certain peculiarities: there were initial and intermittent demands for dowry by the in-laws; there never were continuous or temporally appreciable stretches of cohabitation of the de facto complainant with the in-laws; there are no allegations to the effect that the sisters and/or their husbands came to this State and treated the wife with cruelty (within the ambit of the

Explanation appended to section 498A of the Penal Code) or, that they or any of them practiced long-range cruelty with the help of telecommunication devices; and finally, incidents of physical skirmish between the ladies (the wife on the one hand and her sisters in law and mother-in-law on the other) had taken place outside the State.

Whereas the materials adumbrated to above do not justify the absolution of the father-in-law, the husbands of the sisters and Malati (another sister of the husband) from the snare cast by section 4 of the Dowry Prohibition Act, they stoutly emboss the mark of legality on the act of negating the applicability of section 498A vis-a-vis these accused.

The concept of 'cruelty' as enunciated by the *Explanation* to section 498A while not necessitating living under the same roof, most definitely disregards solitary or unconnected instances of cruel behaviour; its main catchment area being wilful conduct or continuous harassment, the first 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; the second with a view to coercing her or any person related to her to meeting 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. Here, there is no conduct of this particular serious type attributed to those, including the two sisters named in the chargesheet, who have been kept out of the ambit of section 498A. What we have here are sporadic demands for dowry, physical skirmishes in Alwar and New Delhi, vague allegations of equally vague threats by the parents-in-law while they were at Barrackpore and that is pretty much all.

The word 'harassment' carries within its confines the notion of continuity. A few incidents of demands for dowry and that too without the essential adjunct of 'coercion' cannot attract section 498A of the Penal Code. In this case, the materials on record neither exhibit continuity nor the element of coercion. The acts and conduct imputed to the female accused (the three sisters and the mother of the husband) could only have had made them answerable to a charge of transgressing section 323 of the Penal Code and that too if one is prepared to ignore for the moment the

provisions relating to the jurisdiction of criminal courts. The father-in-law along with the two husbands of the two sisters was never attributed any specific or vicarious role in the commission of this alleged offence.

The issue of territoriality should also play an important part in this prosecution as the entire gamut of accusations against all the accused except the husband are apparently found not to have any geographical nexus with the State of West Bengal. This aspect of the matter would most definitely demand a careful consideration at the proper stage.

Despite the pitfalls and shortcomings in the arguments that have been advanced on behalf of the de facto complainant, one cannot stop himself from commenting upon the fact that the investigation ought not to have lingered for 10 years. It is understandable that an investigating officer being subordinate in rank to the accused-husband (an IPS) may have had difficulties in exhibiting promptness in winding up the affair but the SP of the district ought to have been more vigilant in this regard. Be that as it may, I must mention here that despite the tardiness the ultimate result of the investigation appears to be fair and not lopsided in favour of a superior member of the brethren.

I find no reason to accede to any of the prayers urged by the de facto complainant. Further investigation would not only be absolutely futile but quite unnecessary in the instant case. Similarly, all the offenders named in the formal FIR cannot be imputed with the entire range of offences mentioned therein. At the same time one must not ignore the fact that the potential evidential materials do not justify the complete exoneration of the father-in-law, the two husbands of the two sisters and Malati.

It is settled law that the conclusion reached by police and manifested in the chargesheet is not binding upon the court. It is also *res judicata* that cognizance is taken of offences and not of the offenders. Keeping these legal axioms in mind and after carefully evaluating the materials collected during investigation I am fortified in my conclusion that the father-in-law and the husbands of the two sisters may also be summoned to stand trial for the alleged infraction of section 4 of the Dowry Prohibition Act. In the same way, the other sister Malati should also be summoned to answer

charges under section 323 of the Penal Code and section 4 of the Dowry Prohibition Act.

If this is success for the de facto complainant and her protest petition, the latter thus succeeds in practice to this extent.

The State's contention regarding the operability of section 448 of the Penal Code against the husband may be considered at the time of framing of charge.

Issue summonses accordingly, fixing 24 February 2017 for SR/appearance.

CMM, Calcutta

Later

Accused Rishikesh Meena has filed a petition with a copy thereof, along with Photostat copies of two judgments. Let the same be kept with the record.

D/c by me

C.M.M, Calcutta