

12.09.2022

Sl. No. 11
Srimanta
Ct.No. 42

CRR/3448/2022

In the matter of : **Sanchari Mukherjee & Anr.**
...petitioners.

Mr. Ayan Bhattacharjee, Adv.,
Mr. Subhajit Manna, Adv.,
Mr. Suman Majumder, Adv.

...for the Petitioners.

Mr. Shibaji Kumar Das, Adv.,
Ms. Rupsa Sreemani, Adv.

...for the opposite party no. 2.

The petitioners being the accused in connection with Dhaniakhali Police Station Case No. 163/2022 dated 25th July, 2022 under Sections 306/34 of the Indian Penal Code has filed the instant revision under Section 482 of the Code of Criminal Procedure praying for quashing of the investigation in respect of the above-mentioned Dhaniakhali Police Station Case No. 163/2022.

Learned Advocate for the petitioners submits as follows:-

Marriage of petitioner no. 1 was solemnized with one Hirak Subhra Mukherjee, since deceased, on 13th August, 2012. Suffice it to say that marital life of the deceased and his wife, petitioner no. 1 herein, was not happy. The deceased husband filed a Matrimonial Suit No. 303/2020 against the petitioner no. 1 praying for divorce on the ground of desertion since 7th August, 2019. Subsequently, on 25th July, 2021, the petitioner no. 1 lodged a written complaint before the jurisdictional Police Station on the basis of which FIR Case No. 167/2021 was registered against the above-named deceased and other matrimonial relations of the petitioner no. 1 under Sections 494/498A/406/506/34 of the

Indian Penal Code. Petitioner no. 2 who is the father-in-law of the deceased also filed complaint against the deceased alleging commission of offence under Sections 420/406/379/380/506/34 of the Indian Penal Code. During pendency of all the above-mentioned cases, the said HIRAK SUBHRA MUKHERJEE committed suicide on 21st July, 2022. On 25th July, 2022 one RAJ KUMAR DATTA being the husband of the sister of deceased, HIRAK SUBHRA lodged a written complaint alleging, *inter alia*, that on 22nd July, 2022 he discovered two letters from the almirah of deceased, HIRAK SUBHRA where he stated that during too mental torture of his estranged wife and father-in-law, he committed suicide.

It is not suppressed by the petitioners that the petitioners prayed for anticipatory bail before this Court under Section 438 of the Code of Criminal Procedure giving rise to CRM(A) 4274/2022. The said application for anticipatory bail was rejected on the ground that the suicide note left by the deceased implicates the petitioners.

In the instant revision the Learned Advocate for the petitioners have raised two issues, *viz.* (i) investigation process against an estranged wife and her father on the allegation for committing offence under Section 306 of the Indian Penal Code is an instance of abuse of the process of the Court, and (ii) Whether the petitioners are held liable on the basis of such so-called suicide note left by the deceased husband of the petitioner no. 1 as abettor of commission of suicide by the husband of the petitioner no. 1 when the deceased husband himself specifically pleaded that the petitioner no. 1 by deserted permanently the husband since August, 2019.

The Learned Advocate for the petitioner invites this Court to address on the above-mentioned two issues under the inherent power of this Court.

Mr. Shibaji Kumar Das, Learned Advocate, under instruction, submits that he represents the private opposite party/*de facto* complainant. It is submitted by Mr. Das that the husband of the petitioner no. 1 committed suicide only on 21st July, 2022. FIR was lodged on 25th July, 2022. The Investigating Officer has already seized the suicide note left by the deceased. The Division Bench of this Court on the basis of the said suicide note rejected anticipatory bail of the petitioners. Under such circumstances, no interim order should be passed stalling the process of investigation.

In turn, the Learned Advocate for the petitioners refers to a decision of this Court in the case of ***Tajmul Hossain Shah @ Taju Shah & Anr.-Vs.- State of West Bengal & Anr.*** reported in ***2007(1) AICLR (Cal) 803***. It is observed by this Court in the above-mentioned report that rejection of prayer for bail cannot be a ground for interference by this Court in this revisional application. Scope and object of Section 438 of the Code is limited and the Court will see materials in case diary and nothing more. While exercising power under Section 482 of the Code, the High Court exercises more power and can go further deep into the matter. He also refers to a Supreme Court decision in the case of ***State of Kerala & Ors. -Vs.- S. Unnikrishnan Nair & Ors.*** Reported in ***(2015) 9 SCC 639***. Paragraph 17 of the said report is relevant and quoted below.

“17. Coming to the case at hand, as we have stated earlier, the suicide note really does not state about any continuous conduct of harassment and, in any case, the facts and circumstances are quite different. In such a situation, we are disposed to think that the High Court is justified in quashing the proceeding, for it is an accepted position in law that where no prima facie case is made out against the accused, then the High Court is obliged in law to exercise the

jurisdiction under Section 482 of the Code and quash the proceedings”.

In view of what has been stated above, the instant revision be admitted.

Since the private opposite party has entered appearance Learned Advocate-on-record for the petitioner is requested to serve a copy of the revisional application in course of this day. The State of West Bengal be served through the Learned Public Prosecutor, High Court, Calcutta. Affidavit-of-service be filed within one week after vacation.

In the meantime, the Investigating Authority shall not take any coercive action against the petitioners till 30th November, 2022. However, this order will not disentitle the Investigating Officer to interrogate the petitioners on service of notice under Section 41A of the Code of Criminal Procedure.

(Bibek Chaudhuri, J.)