

GAHC010172512018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./770/2018

SARADA BAISHYA ANDF 2 ORS.
W/O SRI KIRAN BAISHYA, R/O QTR. NO. 101, CENTRAL GOTANAGAR,
NEAR RAM MANDIR, MALIGAON UNDER JALUKBARI POLICE STATION,
GUWAHATI-11 IN THE DISTRICT OF KAMRUP(M), ASSAM

2: BHANU BAISHYA
D/O SRI KIRAN BAISHYA
R/O QTR. NO. 101
CENTRAL GOTANAGAR
NEAR RAM MANDIR
MALIGAON UNDER JALUKBARI POLICE STATION
GUWAHATI-11 IN THE DISTRICT OF KAMRUP(M)
ASSAM

3: KAMAL BAISHYA @ RINKU
S/O SRI KIRAN BAISHYA
R/O QTR. NO. 101
CENTRAL GOTANAGAR
NEAR RAM MANDIR
MALIGAON UNDER JALUKBARI POLICE STATION
GUWAHATI-11 IN THE DISTRICT OF KAMRUP(M)
ASSA

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY PP, ASSAM

2:ELORA PATHAK
W/O SRI KUSHAL BAISHYA
R/O NILACHALPUR
GAROBASTI
GOSHALA UNDER JALUKBARI POLICE STATION
GUWAHATI-11 IN THE DISTRICT OF KAMRUP(M)

ASSA

Advocate for the Petitioner : MR D TALUKDAR

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. Z. Kamar, Senior Advocate.
Mr. T. Das, Advocate.

For the Respondents : Mr. D. Das, Additional PP.

Date of Hearing : 29.08.2023

Date of Judgement : 29.08.2023

JUDGMENT & ORDER (ORAL)

1. Heard Mr. Z. Kamar, learned Senior Counsel assisted by Mr. T. Das, learned counsel for the petitioners. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State of Assam.
2. The present criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973, for quashing of the impugned order dated 12.06.2018 passed by the learned Judicial Magistrate 1st Class, Kamrup (M) at Guwahati wherein charge under Section 498(A) of the Indian Penal Code was framed against the present petitioners. The further prayer is to quash the entire proceeding in respect of the present petitioners/accused in G. R.

Case No. 508/2017 which is pending for trial before the learned Judicial Magistrate 1st Class, Kamrup (M) at Guwahati.

3. The brief facts of the present case leading to filing of the F.I.R. can be summarized as follows:-

I. The respondent No. 2 lodged an F.I.R. on 13.01.2017 which is quoted herein below:-

“Respect Sir,

Most respectfully beg to state that I am a permanent resident of Nilachal Garobasit, Maligaon. On 22.04.2016, I was married to Sri Kushal Baishya resident of Sualkuchi according to Hindu rites and rituals. After marriage, I started to live with my husband in his present address. I live with my husband, along with my father-in-law, mother-in-law, unmarried sister-in-law, brother-in-law. After marriage at the time of 8th day rituals i.e. (Aath Mangala), I came to know about the angry nature of my husband. After marriage, I started leaving in a room of a quarter with all my Stridhan goods. Initially everything was running good but from the month of last September, 2016, my husband without any reason is not continuing the marital relationship and at night he sleeps in his mother's bed. After passing of some days, I started to protest, at this may mother-in-law, brother-in-law and unmarried sister-in-law put some false allegation and use slang languages against me. In this way I have to pass some months in isolation in my own home. They always commit mental torture in one way or other. But I used to bear every such torture, believing that better days will come one day. I had slept may days without any food. I cannot finish by writing in this F.I.R. about the torture on me both physically and mentally for the last four months. After sometime, I came to know about the greedy nature of my husband, mother-in-law and sister-in-law living nearby about dowry.

My husband also stopped to talk with me. My mother-in-law, sister-in-law used to shout at me when I used to willingly approach my husband to talk with him. Since marriage, my husband has never take me out on any occasion for any celebration. On 01.01.2017, my husband's family has gone for family picnic but they have not taken me with them. Day before yesterday i.e. on 11.01.2017, when I asked my husband whether in Uruka festival also I have to stay alone, then he avoided me. In my husband's presence, mother-in-law, sister-in-law, brother-in-law chased to beat me. Again today at morning 07:00 O'clock when I went to talk with my husband, my husband, mother-in-law, brother-in-law, sister-in-law and one maternal uncle-in-law misbehaved with me and again chased to beat me. Finding no other alternative, I escaped from there somehow and took shelter in the neighbour's house and after that I went to Goshala Out Post and from there my brother rescued me.

Madam, I attempted to do commit suicide because of the torture done to me both mentally and physically by the accused persons. Now all my desire has been shattered.

Therefore, I respectfully request you to kindly take necessary action against the accused persons and give them suitable punishment".

- II. The petitioners herein are the mother-in-law, sister-in-law and brother-in-law of the informant.
- III. On the basis of the aforesaid F.I.R. lodged before the All Women Police Station, Panbazar, Guwahati, a case being All Women P.S. Case No. 11/2017 under Section 498A of IPC was registered.
- IV. After completion of investigation, the Investigating Officer laid the charge sheet against the present petitioners and the husband of the informant, however, another brother-in-law and sister-in-law who

were also made accused were not sent for trial as according to the Investigating Authority, no materials could be collected against them.

V. Thereafter, the learned Court below by the impugned order dated 12.06.2018, took cognizance of the offence under Section 498A of IPC against the present petitioners and the husband of the informant.

VI. While taking cognizance, the learned Court below considered the statement of the witnesses recorded under Section 161 of Cr.P.C., and held that such statements are sufficient to presume that accused persons might have committed the offence.

VII. Being aggrieved, the present criminal petition is filed.

4. Mr. Z. Kamar, learned Senior Counsel for the petitioners argues that from bare reading of the FIR as well as the statement recorded under Section 161 of Cr.P.C., by the police during the investigation, do not make out or constitute any cognizable offence, not to say any offences under Section 498 A of IPC.

5. Relying on the decision of the Hon'ble Apex Court in the case of ***Kahkashan Kausar @ Sonam –Vs- The State of Bihar*** reported in ***2022 6 SCC 599***, Mr. Kamar, learned Senior Counsel argues that the present is a case where the provision of Section 498 A of IPC has been misused by implicating the present petitioners who are relatives of the husband of the informant and implication of such proceeding will have long time ramification of a trial inasmuch as bare reading of the FIR as well as the charge-sheet and the statement recorded under Section 161 of Cr.P.C., will go to show that the implications are vague and omnibus and no

individual role has been attributed to the present petitioners. Though general omnibus statement were made against the all the six accused, however, on the same material available on record, the other sister-in-law and brother-in-law have not been sent for trial.

6. Mr. Kamar, learned Senior Counsel further contends that in absence of any specific role attributed to the present petitioners who are family members, it would be unjust if the petitioners are force to go through the tribulation of the trial inasmuch as the allegations made against the relatives, the present petitioners are general and omnibus in nature. Therefore, they should not be forced to undergo trial.
7. Per contra, Mr. D. Das, learned Additional Public Prosecutor for the State of Assam submits that bare perusal of the FIR, will go to show that there are specific allegations that on the date of Uruka, the relatives of the husband including the petitioners joined together and tried to attack the informant/victim inasmuch as it is specifically stated by the victim that she has been misbehaved and scolded by the relatives of her husband.
8. That being the position, Mr. D. Das, learned Additional Public Prosecutor for the State of Assam submits that it is not a fit case where this Court should exercise its jurisdiction to quash the proceeding including the charge-sheet and order of taking cognizance which has been done after proper investigation and on the basis of the statement of the witnesses.
9. This Court has given anxious consideration to the submissions made by the learned counsel for the parties. Also perused the FIR, annexures annexed thereto and also the statements recorded under Section 161 of the

Cr.P.C, by the investigation authority.

10. The Hon'ble Apex Court after considering numerous instances, in the case of ***Sushil Kumar Sharma –Vs- Union of India and Ors*** reported in ***2005 6 SCC 281***, held that many instances have come to light, where complaint under Section 498A IPC are not bonafide and have been filed with oblique motive and in such cases, acquittal does not in all cases wipe out the ignominy suffered during the period of trial. It was further held that provision of Section 498A IPC is intended to be a shield and not an assassin weapon though this Court has held mere possibility of abuse of a legal provision does not invalidate the Section 498A of IPC.
11. Taking a similar view of abuse of provision of Section 498A of IPC, the Hon'ble Apex Court in the case of ***Arnesh Kumar –Vs- State of Bihar*** reported in ***2014 8 SCC 273***, issued certain guidelines in respect of arrest etc., under Section 498 A of IPC. Subsequently, in the case of ***Social Action Forum for Manab Adhikar –Vs- Union of India*** reported in ***2018 SCC Online SC 1501***, the Hon'ble Apex Court issued further directions, however, clarified that such direction will not apply in case of tangible physical injury or death.
12. Law is by now also well settled that the inherent power of the High Court under Section 482 of Cr.P.C. can be exercised to prevent abuse of the process of the Court where the allegations made in FIR or charge-sheet or on the basis of the materials available on record are taken at face value and accepted in their entirety do not constitute the offence alleged or when there is an abuse of the process of the Court.

13. In a recent judgment, the Hon'ble Apex Court in the case of **Mahmood Ali and Others –Vs- State of U.P. and others** reported in **2023 SCC Online SC 950** at paragraph 13 held as follows:-

“.....13. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (Cr.PC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and , if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the

overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged”.

14. In the backdrop of the settled propositions of law as discussed herein above, now let this Court consider the present case.
15. From the present case, it is seen that the allegation is basically against the husband of the victim/informant. After going through the entire FIR, the allegation that could be find out against the present petitioners (the mother-in-law, brother-in-law and unmarried sister-in-law) is that they used to rebuke her by using unparliamentary words. The second allegation that can be discernible from the FIR, so far relating to the present petitioners, the mother-in-law, and sister-in-law used to rebuke her. The other allegation is that on the date of Uruka i.e. on 11.01.2017, when she asked her husband whether she should live alone on that date also, then her mother-in-law and sister-in-law and brother-in-law tried to attack her.
16. From the perusal of the aforesaid, this Court is of the view that such allegation is nothing but omnibus statement. No specific period is mentioned and no specific role has been attributed to any of the relatives of the petitioner.
17. Similar is the situation as regards the statement recorded under Section 161 of the Cr.P.C. during investigation. No specific role has been attributed

to the present petitioners in commission of offence under Section 498A of IPC. Further there is no whisper of any dowry demand in the FIR or any torture on not fulfilling such demand of dowry is discernible.

18. Therefore, in the aforesaid backdrop, in the considered opinion of this Court, the petitioners have been able to make out a case for interfering with the criminal prosecution as impugned and this Court is also of the unhesitant view that from the material available on record and reading of the statement of the witnesses as well as the victim/informant, no case under Section 498A of IPC is made out against the present petitioners.
19. In that view of the matter, the present criminal petition is allowed by setting aside the impugned order dated 12.06.2018 passed in G. R. Case No. 508/2017 by the learned Judicial Magistrate 1st Class, Kamrup (M) at Guwahati wherein charge under Section 498A of the Indian Penal Code was framed against the present petitioners as well as entire proceeding in respect of the present petitioners/accused in G. R. Case No. 508/2017 which is pending for trial before the learned Judicial Magistrate 1st Class, Kamrup (M) at Guwahati.

JUDGE

Comparing Assistant