

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P.53 of 2024

- 1. Abjal Miah** S/o Bahar Miah
R/o Holakhet, P.S. RK Pur, Dist. Gomati, Tripura
- 2. Bahar Miah** S/o late Farid Miah
R/o Holakhet, P.S. RK Pur, Dist. Gomati, Tripura
- 3. Ayasha Khatun** W/o Bahar Miah
R/o Holakhet, P.S. RK Pur, Dist. Gomati, Tripura
- 4. Rahima Khatun** D/o Bahar Miah
R/o Holakhet, P.S. RK Pur, Dist. Gomati, Tripura

.....**Accused Petitioners**

Versus

The State of Tripura

.....**Respondent**

For Petitioner(s) : Mr. S. Ali, Advocate.
Mr. T. Ali, Advocate.

For Respondent(s) : Mr. R. Datta, PP.

Date of hearing and delivery
of judgment and order : 06.09.2024.

Whether fit for reporting : YES

HON'BLE MR. JUSTICE T. AMARNATH GOUD

JUDGMENT & ORDER (ORAL)

Heard Mr. S. Ali, learned counsel and Mr. T. Ali, learned counsel appearing for the petitioners. Also heard Mr. R. Datta, learned PP appearing on behalf of the State.

[2] The present petition has been preferred by the petitioners under Section 397 read with Section 401 of the Criminal Procedure Code, 1973 challenging the order dated 07.08.2024 passed by the learned Sessions Judge, Gomati Judicial District, Udaipur.

[3] Briefly stated, the prosecution story is that a complaint was made by one Dilbar Hossain, S/o late Siraj Miah, Vill: Uttar Chandrapur under P.S. RK Pur to O.C., RK Pur, Women P.S., Udaipur alleging inter alia that about nine months back the marriage of his daughter i.e. the victim was solemnized with the petitioner Abjal Miah as per Mohammedan Rites and Customs. In that marriage, as per the demand, many articles were given but, after elapsing of 3/4 months, the accused persons i.e. the petitioners on different pleas started causing physical and mental torture upon the victim. Later on, the victim became pregnant and she was having pregnancy of three months but they did not consult any doctor. Thereafter, the informant brought his daughter to his residence and she was again sent back to her matrimonial home. On 09.09.2022 in the morning, the complainant got information from Holakhet Panchayat that the condition of his daughter was serious. Accordingly, he rushed towards the place of occurrence and found smell of kerosene oil from the body of the victim and on query, he could know from the victim that the accused petitioners with an intention to kill her, severely assaulted her and poured kerosene oil on her body and tried to set fire upon her body. She was, thereafter, shifted to Tripura Sundari District Hospital, Udaipur for treatment.

[4] On the basis of the above complaint, an FIR was lodged to the O.C. RK Pur Women P.S. Accordingly, O/C RK Pur Women P.S. registered RK Pur Women P.S. case No.38 of 2022 under Section 498(A)/326/34 of IPC and after completion of investigation, the I.O. being prima facie satisfied made charge-sheet against all the petitioners under Section 498(A)/325/307/506/34 of IPC.

[5] Learned Sessions Judge, Gomati District, Udaipur in case no. ST (Type-I) 47 of 2022 passed an on 24.01.2024 framing charge against the accused petitioners namely, Abjal Miah, Bahar Miah, Ayasha Khatun & Rahima

Khatun under Sections 498-A/325/307/506/34 of IPC and a separate charge was framed against another accused petitioner namely Bahar Miah under Section 506 of IPC.

[6] Challenging the aforesaid order dated 24.01.2024 passed by the Court below, the accused petitioners, on earlier round of litigation, approached this Court by filing a revision petition being CRL.REV.P.No.14 of 2024. On 06.05.2024, this Court observed that the prosecution would adduce all the witnesses in the case before the learned Court below to substantiate the charge and at the same time, the accused-petitioners would have the liberty to take proper defence before the learned Court below to prove their innocence. The relevant contents of the said order of this Court are quoted herein below:

".....12. Here in this case, the evidence of the victim has not yet been recorded, so, in absence of evidence of the victim and other witnesses, the actual allegation against the petitioners cannot be determined. So, the prosecution is to adduce all the witnesses in the case before the Learned Court below to substantiate the charge and at the same time, the accused-petitioners shall have the liberty to take proper defence before the Learned Court below to prove their innocence.

13. So, considering the facts and circumstances of the case and after hearing Learned Counsel of both the sides, it appears to me that a fresh charge is required to be framed against the petitioners deleting Section 498(A) of IPC. If in course of trial, the material under Section 498(A) of IPC is revealed against the petitioners in that case, the Learned Court below shall have the liberty to alter the charge. But till then, it comes to this Court that prima facie there is no material to frame charge against the petitioners under Section 498(A) of IPC. But there are materials to frame charge against all the petitioners as stated above under Section 325/307/34 of IPC and also there is material to frame charge under Section 506 of IPC.

14. In the result, the revision petition filed by the petitioners is partly allowed. Section 498(A) of IPC be deleted from the charge framed by Learned Court below and a fresh charge be framed against the petitioners under Section 325/307/34 of IPC along with Section 506 of IPC against one of the petitioner. The petitioners shall appear before the Learned Court below on 20.05.2024. On that day, Learned Court below shall frame a fresh charge against the petitioners and thereafter, shall proceed for recording evidence of the witnesses of the prosecution. All endeavour shall be made to dispose of the case within a period of four months from the date of receipt of the copy of the judgment/order.

15. A copy of this order be communicated to the Learned Court below immediately. A copy of this order/judgment also be furnished to Learned Counsel for the petitioners free of cost. Send down the LCRs henceforth.

Pending application(s), if any, is accordingly stands disposed of.

With this observation, this revision petition is disposed of on contest."

[7] Thereafter, the learned PP, Gomati District, Udaipur Tripura filed an application under Section 216 of Cr.P.C. for addition of charge for commission of offence punishable under Section 498-A IPC. It is contended in this present revision petition that a written objection against the said application filed by the learned PP was submitted by the petitioners before the learned Court below. Subsequently, learned Court below passed an order on 07.08.2024 in case No. ST-47 of 2022 (Type-I) allowing the application of the learned PP mentioning that Section 498-A IPC will be added against all the accused persons. Aggrieved by the said order impugned dated 07.08.2024, the present revision petition is filed by the petitioners seeking following reliefs:

"(i) Admit this petition;

(ii) Call for records from the Court of the Learned Sessions Judge, Gomati Judicial District, Udaipur;

AND

(iii) After hearing the parties further be pleased to quash and set aside the Order dated 07.08.2024 as passed in ST (Type 1) 47 of 2022 by the Learned Sessions Judge, Gomati Judicial District, Udaipur; or

(iv) Pass such further order or orders including the order of suspension of the operation of the said order dated 07.08.2024 during pendency of this proceeding;

(v) Pass kind order to stay the trial in ST 47 of 2022 before Ld. Sessions Judge, Gomati Judicial District, Udaipur, till the disposal of this revision petition....."

[8] Mr. S. Ali, learned counsel appearing for the petitioners submits that the prosecution has not produced sufficient evidence before the learned Court below to support addition of Section 498-A IPC to the charges. He further contends that in his application filed under Section 216 of Cr.P.C. 216, learned PP, Gomati District, Udaipur, Tripura, did not adduce any evidence on

the basis of which, the charge under Section 498-A IPC be framed against the accused persons. It is contended on behalf of the petitioners that learned Court below has committed manifest error in incorporating charge under Section 498-A IPC against the accused persons by way of its order dated 07.08.2024 as in the said order, the incomplete application of the learned PP, Gomati District, Udaipur has been considered. He, therefore, urges this Court to set aside the impugned order passed by the learned Court below.

[9] On the contrary, Mr. R. Datta, learned PP appearing on behalf of the respondent-State submits before this Court that this revision petition is not maintainable under Section 397 of the Cr.P.C. In this regard, he has placed reliance on the provisions of Section 397 (2) of the Cr.P.C. He has further placed reliance on the paragraph—37 of the judgment of Hon'ble Supreme Court in ***Asian Resurfacing of Road Agency Private Ltd. and another v. Central Bureau of Investigation*** reported in **(2018) 16 SCC 299**. For the purpose of reference, the provisions under Section 397 of Cr.P.C and the paragraph-37 of the aforesaid judgment of Hon'ble Supreme Court as relied upon by the learned PP are extracted as under:

Section 397 of the Cr.P.C.:

"397. Calling for records to exercise of powers of revision.- (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding....."

Paragraph—37 of the judgment of Hon'ble Supreme Court in ***Asian Resurfacing of Road Agency Private Ltd. and another v. Central Bureau of Investigation*** reported in **(2018) 16 SCC 299:**

".....37. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 CrPC or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to reappreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time-limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to the PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on the above parameters. Same course may also be adopted by civil and criminal appellate/ Revisional Courts under the jurisdiction of the High Courts. The trial courts may, on expiry of the above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced....."

[10] Learned PP contends that there is no error in the impugned order dated 07.08.2024 passed by the learned Court below in framing charge against the petitioners under Section 498-A IPC and the same is just and proper in the eye of law. He, therefore, prays this Court to dismiss the instant criminal revision petition filed by the petitioners.

[11] Heard the submissions made at the Bar. Perused the material evidence on record.

[12] It is seen from record that an application under Section 216 of Cr.P.C. was filed before the Court below by the learned PP, Gomati District,

Udaipur for incorporating the charge under Section 498-A IPC against the accused persons i.e. the petitioners herein. For the purpose of reference, the contents of the said application filed by the learned PP, Gomati District, Udaipur is extracted hereunder:

*"IN THE COURT OF SESSION JUDGE
GOMATI DISTRICT: UDAIPUR*

CASE NO-ST-47/2022.

The state of Tripura Petitioner.

Vrs

Bahar Miah & others..... Accused persons.

An application U/S- 216 of Cr.P.C. for adding the charge Under section-498(A) of I.P.C against the accused Persons Namely Abjal Miah, Bahar Miah, Smt. Ayesha Khatun & Smt. Rahima Khatun.

1. That, the above mention case is fixed today for recording evidence of Prosecution witness.
2. That, after gone through the case record and examination of some witnesses it is evident that adding of charge Under section 498(A) I.P.C. is necessary for the interest of the case.
3. That, for ends of justice a charge U/S-498(A) of I.P.C. is to be added and framed against the all accused persons in addition charge framed earlier otherwise the prosecution will be prejudice.

A__N__D

Necessary order may kindly be passed for adding charge along with the charge framed earlier against all accused persons of this case."

[13] Considering the above cited application filed by the learned PP, Gomati District, Udaipur, Tripura, learned Court below, pending trial, incorporated charge against the accused petitioners under Section 498-A IPC by the impugned order dated 07.08.2024. For better appreciation of the facts, the relevant contents of the said order passed by the learned Court below are extracted as under:

".....13. In compliance with the aforesaid judgment of the Hon'ble High Court, charge was framed against all the accused persons U/S 325/307/34 of IPC and against the accused Bahar Miah U/S 506 of IPC.

14. Thereafter, this Court recorded the evidence of the victim and some other prosecution witnesses.

15. The Hon'ble High Court of Tripura while disposing the aforesaid revision was also pleased to observed in Para-13 of the Judgment that if in the course of trial

the material under section 498A of IPC was revealed against the accused persons then in that case the court would be at liberty to alter the charge.

16. On this point let us discuss some case laws.

In "**Anant Prakash Sinha v. State of Haryana 2016 (6) SCC 105**", the Hon'ble Apex Court held that the Court can change or alter the charge if there is a defect or something is left out, and the test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents, or the material brought on record during the course of trial. The Hon'ble Apex Court observed that the principle that has to be kept in mind is that the charge so framed by the court is in accordance with the materials produced before him or subsequent evidence that comes on record.

In "**Central Bureau of Investigation v. Karimullah Osan Khan, 2014 (11) SCC 538**", the Hon'ble Supreme Court held that Section 216 CrPC gives considerable power to the Trial Court, that is, even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add to any charge, subject to the conditions mentioned in the provision.

In "**Jasvinder Saini v. State (Govt. Of NCT of Delhi), 2013 (7) SCC 256**", wherein the Hon'ble Apex Court, while considering the question whether the trial court was justified in adding a charge, held that the Court's power to alter or add any charge under Section 216 of Cr.P.C is unrestrained, provided, such alteration or addition is made before the Judgment is pronounced.

17. There is no dispute regarding the laws settled in cases (supra) as referred to by the Ld. Defence Counsel, but each case has to be dealt with on the basis of materials available and peculiar to that case.

18. On perusal of the evidence of the victim i.e. PW.2 and other prosecution witnesses specially i.e., PW.1 and PW.3 there appears prima-facie materials disclosing commission of offence punishable under section 498A of IPC by the accused persons and thus this Court is inclined to allow the petition filed under Section 216 of Cr.P.C read with Section 239 of BNSS for addition of charge for commission of offence punishable under section 498A of IPC against all the accused persons.

19. Accordingly the petition dated 09-07-2024 filed by the prosecution for addition of charge, is allowed.

20. However as, except the accused Bahar Miah, other accused persons are absent so new charge shall be framed, read and explained to the accused persons on the next date.

21. All the accused persons are directed to remain present on the next date without fail....."

[14] A careful examination of the above-quoted application filed by learned PP, Gomati District, Udaipur under Section 216 of Cr.P.C. and the impugned order dated 07.08.2024 passed by the Court below, does not disclose any valid reasons for incorporating charge under Section 498-A IPC against the petitioners. This Court, in earlier round of litigation, vide order dated 06.05.2024 passed in CRL.REV.P.No.14 of 2024 which has already been cited above, observed that the prosecution would adduce all the witnesses in the case before the learned Court below to substantiate the charge. But, the

prosecution has failed to reflect proper reasoning in the application filed under Section 216 of Cr.P.C. and the Court below on the basis of the said un-reasoned application, pending trial, passed the impugned order dated 07.08.2024 incorporating charge under Section 498-A of IPC against the accused persons.

[15] In view of the above discussions, this Court is of the view that since the application filed by the learned PP, Gomati District, Udaipur, Tripura under Section 216 of Cr.P.C. is not self-explanatory, resultantly, the impugned order passed by the Court below basing upon the same application, is liable to be set aside and accordingly, the same is quashed. In this regard, the provisions of law and the judgment referred by the learned PP before this Court are not relevant to the facts and circumstances of the case. Hence, the present revision petition filed by the petitioners is allowed and accordingly the same is disposed of.

As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

JUDGE

Sabyasachi. G.

RAJKUMAR

SUHANJIT SINGHA

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