

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 196 of 2020

Shri Goutam Majumdar @ Goutam Mazumdar & Ors.

-vs-

The State of West Bengal & Anr.

For the Petitioners : Mr. Sajal Kr. Ghosh
Mr. R. Bhattacharyya

For the O.P. No. 2 : Mr. Apalak Basu

For the State : Mr. Tanmay Kr. Ghosh, Ld. SGA
Mr. Arindam Sen

Heard on : 8.7.2022

Judgment on : 19.07.2022

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and/or dissatisfied with the impugned proceeding being G.R. case no. 2049 of 2019 pending before the learned Chief Judicial Magistrate, Paschim Bardhaman arising out of Asansol (south) Police Station case no. 289 of 2019 dated 3.9.2019 under Sections 498A/323/506/34 of the Indian Penal Code, present revisional application has been preferred.

2. It has been contended by the learned advocate for the petitioners that petitioner no. 1 is aged about 71 years and he was married with the opposite

party no. 2 on 11.2.1974 and since after the marriage, the opposite party no. 2 did not adjust with the petitioner no. 1 and his family members. There were disputes and differences between the parties at a regular interval due to behavioural attitude of opposite party no. 2. However, due to said wedlock, two sons and a daughter were born who are now well established in their life. The petitioner no. 1 was a bank employee and his service was transferable and as such he had to spend several years out of station and only few years back he came back to his home station and started to reside with his family permanently but surprisingly he discovered that his wife, son and daughter were not actually happy with him. The opposite party no. 2/complainant is very demanding in nature and she always demands huge money from petitioner no. 1. The petitioner no. 2 is the sister of petitioner no. 1, petitioner no. 3 is the husband of petitioner no. 2 , petitioner no. 4 is the son of petitioner no 2 and 3 and petitioner no. 5 is the wife of petitioner no. 4 and they are well settled in their lives and they have built their separate residence at different places. The petitioner nos. 1,2 and 3 are retired persons and petitioner no. 4 is a teacher. In fact, the petitioner no. 1 had become so much depressed due to rude and obscene behaviour from the opposite party no. 2 that he attempted to commit suicide on several occasions but on every occasion, the petitioner no. 2 and 3 saved his life. The petitioner no. 2 always threatened the petitioner no. 1 with unlawful demands and also threatened to lodge criminal cases against the petitioner no. 1 under the charges of atrocities and/or cruelty to the wife and used to threaten to put the petitioner no. 1 behind the bar under the

provision of Indian Penal Code. When the opposite party no. 2 became unsuccessful in extorting huge money from petitioner no. 1 as per her demands, she went to petitioner no. 2 and 3's house with some antisocial elements on 21.4.2019 and committed a huge disorder and also abused her with filthy language for which the petitioner no. 1 sent a complaint dated 11.4.2019 through registered post with acknowledgement due addressed to Inspector-in-charge, Asansol South Police Station as well as to the Commissioner of Police, Asansol Durgapur police Commissionerate describing the torture which are being committed upon him by opposite party no. 2 and others. In the meantime, being aggrieved with the aforesaid incident committed by the opposite party no. 2 in her house, the petitioner no. 2 who is the younger sister of petitioner no. 1 filed a MP case no. 359 of 2019 against the opposite party no. 2 before the court of Sub-Divisional Executive Magistrate, Asansol under Section 107/116(3) of the Code of Criminal Procedure for a direction upon the opposite party no. 2 to execute bond to maintain peace and on perusal of such prayer, learned Magistrate was pleased to pass an order on 10.6.2019. At the same time, the petitioner no. 1 also filed another MP case no. 421 of 2019 before the learned Sub-Divisional Magistrate, Asansol under Section 107/116(3) of the Code against the opposite party no. 2 with the same prayer and learned Magistrate was also pleased to pass an order dated 21.6.2019 directing Asansol Police Station to cause an enquiry over the same.

3. Thereafter, the petitioner came to know that opposite party no. 2 on 3.9.2019 filed a complaint under Section 156(3) of the Code of Criminal

Procedure vide complaint case no. 1179 of 2019 before the learned Chief Judicial Magistrate, Paschim Bardhaman with a prayer to direct the police authorities to lodge a first information report against the petitioners under Section 498A/323/506/34 of the Indian Penal Code.

4. Learned advocate appearing on behalf of the petitioners submits that petitioners are respectable persons in the society and the allegations levelled in the first information report were absolutely baseless. The petitioner no. 1 did not make any negligence to take care or maintain his wife, sons and daughters as alleged. He had spent a lot of money for their well being and for their safeguard. He incurred huge expenditure for educational expenses of his son and had given marriage of his daughter in a reputed family by spending huge money. It is quite unfortunate for him to be subjected with such ill treatment and abusive gesture from his son and daughter. The petitioner no. 1 has also purchased a flat in the city of Asansol jointly with the name of opposite party no. 2.

5. Learned advocate for the petitioners further contended that application filed by opposite party no. 2 under Section 156(3) of the Code of Criminal Procedure did not follow the ingredients laid down in Section 154 (3) of the Code of Criminal Procedure and the guidelines laid down by Apex Court in *Priyanka Srivastava vs. State of Uttar Pradesh*, reported in (2015) 6 SCC 287 but in spite of that learned Judicial Magistrate, allowed the said application and investigation started though first information report itself is illegal and devoid of any merit and as such is liable to be quashed.

6. Learned advocate appearing for the State submits that petition under section 156(3) was filed with affidavit, so **Priyanka's case (supra)** is not applicable here and that during investigation, sufficient materials have been collected by the investigating officer which involves a question of trial and as such it would not be proper to quash the entire proceedings at its threshold invoking power under Section 482 of the Code of Criminal Procedure. Moreover petitioners have prayed for quashing FIR, but investigation has already been ended in charge-sheet and as such petitioner's prayer made in the revisional application is not maintainable. Mr. Basu appearing on behalf of opposite party No. 2 supported prosecution version.

7. I have gone through the written complain the relevant portions of which may be reproduced below:-

"4. That since last few years the accused no.1 in connivance with the accused no.2 to to 5 leave her matrimonial home otherwise the accused persons may kill your complainant at any time."

"5. That whenever your complainant refuse such illegal demand of the accused persons, the accused persons became furious, assaulted your complainant by fists and blows, did not provide food, clothes, medicine etc. to your complainant properly, the accused persons on very occasions threatened to leave her matrimonial home."

"6. That on 28.07.2019 in the morning the accused person threatened your complainant in Bengali language "TUMI AMAR GHAR THAKA CHOLA JOW TA NA HO LA TOMA KA KHUN KORBO" assaulted your complainant by fists and blows with the intention to kill your complainant your complainant somehow rescue herself from the hands of the accused persons."

8. I have also gone through materials in case diary. It appears that investigation culminated in charge sheet against the petitioners under sections 498A/323/506/34 vide. C.S. No. 304/19 dt. 30.09.2019. In order to prove case, defacto complainant and her two neighbours Smt. Aparna Sengupta and

Smt. Sima Mukherjee beside two police officer, have been cited as witness. Said two witnesses and defacto complainant made statement before police in support of allegation.

9. Though Mr. Ghosh on behalf of petitioners contended that the statements made in the complaint petition and also before police even if taken to be correct is not sufficient evidence to held that the petitioners are guilty of offence punishable under section 498A/323/506/34 of the penal code and for which FIR is liable to be quashed but I am not agreeable that for that reason only FIR is liable to be quashed because appreciation, even in a summary manner, of the averments made in a FIR or before police is not permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it.

10. In this context reliance may be placed in Apex Court judgment in ***Bhaskar Lal Sharma and another Vs. Monica and others*** reported in **(2014) 3 SCC 383**, where Their Lordship pleased to held:-

“10. We disagree. “Cruelty” as defined in the Explanation to Section 498-A of the Penal Code has a twofold meaning. The contentions of Shri Sharan do not deal with the Explanation (a) and is exclusively confined to the meaning dealt with by Explanation (b). Under Explanation (a) conduct which is likely to cause injury or danger to life, limb or health (mental or physical) would come within the meaning of the expression “cruelty”. While instances of physical torture would be plainly evident from the pleadings, conduct which has caused or is likely to cause mental injury would be far more subtle. Having given our anxious consideration to the averments made in the complaint petition, we are of the view that the statements made in the relevant paragraphs of the complaint can be understood as containing allegations of mental cruelty to the complainant. The complaint, therefore, cannot be rejected at the threshold.”

“11. The facts, as alleged, therefore will have to be proved which can only be done in the course of a regular trial. It is wholly unnecessary

for us to embark upon a discourse as regards the scope and ambit of the Court's power to quash a criminal proceeding. The appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence.”

11. In this context, I am also inclined to refer another Apex Court Judgment , where Their Lordship dealt with the tests to be made before exercising power under section 482 of the code. In **Taramani Parakh Vs. State of Madhya Pradesh and others** reported in **(2015) 11 SCC 260**, it was held:

“11. Referring to earlier decisions, in Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2013) 1 SCC (Cri) 986 : (2012) 4 SCC (Civ) 687] , it was observed : (SCC pp. 482-84, para 27)

“27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very

initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

[Ref. *State of W.B. v. Swapan Kumar Guha* [*State of W.B. v. Swapan Kumar Guha*, (1982) 1 SCC 561 : 1982 SCC (Cri) 283] , *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* [*Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre*, (1988) 1 SCC 692 : 1988 SCC (Cri) 234] , *Janata Dal v. H.S. Chowdhary* [*Janata Dal v. H.S. Chowdhary*, (1992) 4 SCC 305 : 1993 SCC (Cri) 36] , *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* [*Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, (1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , *G. Sagar Suri v. State of U.P.* [*G. Sagar Suri v. State of U.P.*, (2000) 2 SCC 636 : 2000 SCC (Cri) 513] , *Ajay Mitra v. State of M.P.* [*Ajay Mitra v. State of M.P.*, (2003) 3 SCC 11 : 2003 SCC (Cri) 703] , *Pepsi Foods Ltd. v. Judicial Magistrate* [*Pepsi Foods Ltd. v. Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , *State of U.P. v. O.P. Sharma* [*State of U.P. v. O.P. Sharma*, (1996) 7 SCC 705 : 1996 SCC (Cri) 497] , *Ganesh Narayan Hegde v. S. Bangarappa* [*Ganesh Narayan Hegde v. S. Bangarappa*, (1995) 4 SCC 41 : 1995 SCC (Cri) 634] , *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* [*Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque*, (2005) 1 SCC 122 : 2005 SCC (Cri) 283] , *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [*Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.*, (2000) 3 SCC 269 : 2000 SCC (Cri) 615] , *Shakson Belthissor v. State of Kerala* [*Shakson Belthissor v. State of Kerala*, (2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412] , *V.V.S. Rama Sharma v. State of U.P.* [*V.V.S. Rama Sharma v. State of U.P.*, (2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356] , *Chunduru Siva Ram Krishna v. Peddi Ravindra Babu* [*Chunduru Siva Ram Krishna v. Peddi Ravindra Babu*, (2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297] , *Sheonandan Paswan v. State of Bihar* [*Sheonandan Paswan v. State of Bihar*, (1987) 1 SCC 288 : 1987 SCC (Cri) 82] , *State of Bihar v. P.P. Sharma* [*State of Bihar v. P.P. Sharma*, 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , *Lalmuni Devi v. State of Bihar* [*Lalmuni Devi v. State of Bihar*, (2001) 2 SCC 17 : 2001 SCC (Cri) 275] , *M. Krishnan v. Vijay Singh* [*M. Krishnan v. Vijay Singh*, (2001) 8 SCC 645 : 2002 SCC (Cri) 19] , *Savita v. State of Rajasthan* [*Savita v. State of Rajasthan*, (2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571] and *S.M. Datta v. State of Gujarat* [*S.M. Datta v. State of Gujarat*, (2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201] .]

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.”

12. In a recent judgment, Supreme Court reiterated the same principle in ***Veena Mittal Vs. State of Uttar Pradesh & others*** (Criminal Appeal No. 122 of 2022)

*“6. In this backdrop, the finding of the High Court to the effect that there is no specific allegation against the second and third respondents or that, as the mother and sister of the bridegroom, they would not be either beneficiaries or have a direct link with the perpetrators of the crime is not based on cogent material or a reading of the FIR. It is well-settled that at the stage when the High Court considers a petition for quashing criminal proceedings under Section 482 of the CrPC, the allegations in the FIR must be read as they stand and it is only if on the face of the allegations that no offence, as alleged, has been made out, that the Court may be justified in exercising its jurisdiction to quash. The parameters of the jurisdiction under Section 482 have been reiterated in a consistent line of authorities and, at this stage, it may be material to refer to the recent decision of this Court in *Neeharika Infrastructure v. State of Maharashtra*. Accordingly, we allow the appeal and set aside the impugned judgment and order of the High Court dated 15 April 2019 in Criminal Miscellaneous Application No 27511 of 2018.”*

13. The argument advanced by Id. Advocate for the petitioner that the statement of two neighbour/witnesses as recorded by police during investigation is hearsay in nature and is wholly inadmissible in evidence, cannot be taken into consideration at this stage while adjudicating a petition under section 482 of the code. This court cannot embark upon the appreciation of evidence while considering the petition filed under section 482 Cr.P.C. for quashing criminal proceeding. In this context reliance has been placed in ***Rajeev Kourav Vs. Baisahab and others*** reported in **(2020) 3 SCC 317**.

14. In the present context from a reading of the FIR as quoted above, it cannot said that even if the allegations in FIR are taken as proved, no case is made out. There are allegations against petitioners for harassing the

complainant which forced her to leave her matrimonial home. Even now she continues to be residing at one of her relatives house as she apprehends lack of security and safety in the matrimonial home. The question whether opposite party no.2 has in fact been intimated criminally and/ or assaulted and/or treated with cruelty is a matter of trial but at this stage, it cannot be said that no case is made out.

15. In view of aforesaid discussion CRR 196/2020 is dismissed but having facts and circumstances of the case, without cost. However considering the fact that senior citizen are arrayed, learned Trial Court is requested to make expeditious disposal of the case and subject to convenience within a period of six months from the date of communication of the order without granting any unnecessary adjournment to either of parties, resorting section 309 of the code of criminal procedure.

16. CRR 196 of 2020 is accordingly allowed.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)