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C.R.R.217 of 2021

In Re: An application under Section 482 of the Code of Criminal Procedure, 1973;

Madan Mohan Dey and another
Versus
The State of West Bengal and another

Ms. Sreeparna Das,
Mr. Shubradip Ray.
...for the petitioners.

Mr. Saswata Gopal Mukherjee,
M. Imran Ali,
Ms. Debjani Sahu.
...for the State.

Mr. Angshuman Chakraborty.
...for the opposite party no.2.

The present revisional application has been preferred at the instance of one Madan Mohan Dey and one Maya Dey, being the parents-in-law of one Divya Singh (nee Dey) at whose instance Haridevpur Police Station Case No.380 of 2020 was initiated and registered for investigation.

It has been informed that the investigation of the said case has been concluded and charge-sheet has been filed before the learned ACJM, Alipore under Sections 498A/406/34 of the Indian Penal Code against the present petitioners and one Kaushik Dey, who happens to be the husband of the opposite party no.2/complainant.

I have heard Ms. Das, learned advocate appearing on behalf of the petitioners.

Learned advocate submits that the allegations made in the letter of complaint addressed to the Officer-in-Charge of Haridevpur Police Station if taken on its face value prima facie fails to make out a case and in spite of the same the parents-in-law were asked to face the rigors of complete investigation. It has been pointed out that the present petitioners were also not residing with the couple and were residing at a separate district of Asansol while the couple were residing at an adjacent area of Kolkata, i.e. Behala.

In order to support her contention, learned advocate relies upon the decision in **Kahkashan Kausar alias Sonam and others vs. State of Bihar and others** reported in **(2022) 6 SCC 599**. Learned advocate draws attention of this Court to paragraphs 17 and 18 which are set out as follows:

“17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, it is revealed that general allegations are levelled against the appellants. The complainant alleged that “all accused harassed her mentally and threatened her of terminating her pregnancy”. Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.”

Mr. Chakraborty, learned advocate, appears for the opposite party no.2 and opposes the contention advanced by the petitioner and in order to buttress such contention draws the attention of the Court to the allegations made in the letter of complaint in respect of the father-in-law and the mother-in-law. According to the learned advocate, the allegations made therein are sufficient to cause mental trauma and cruelty, which would bring the case within the ambit of Section 498A of the Indian Penal Code.

It has also been pointed out by Mr. Chakraborty that the gold ornaments were never recovered, although some articles were recovered in course of the investigation by the police authority and it is his instruction that the said gold ornaments were lying at Asansol where the present petitioners reside.

Mr. Chakraborty, learned advocate appearing for the opposite party no.2 relies upon the decision **in Rupali Debi Vs. State of U.P.** reported in **2019 (5) SCC 384**. Learned advocate draws the attention of this Court in paragraphs 14 and 15 which are set out as follows:

“14. *“Cruelty” which is the crux of the offence under Section 498-A IPC is defined in Black's Law Dictionary to mean “the intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (abuse, inhuman treatment, indignity)”. Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being ill-treated are aspects that cannot be ignored while understanding the meaning of the expression “cruelty” appearing in Section 498-A of the Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatise the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress caused by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal*

exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.

15. *The Protection of Women from Domestic Violence Act, as the object behind its enactment would indicate, is to provide a civil remedy to victims of domestic violence as against the remedy in criminal law which is what is provided under Section 498-A of the Penal Code. The definition of “domestic violence” in the Protection of Women from Domestic Violence Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or well-being, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanations (a) & (b) to Section 498-A of the Penal Code which define “cruelty”. The provisions contained in Section 498-A of the Penal Code, undoubtedly, encompass both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. Her sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home. Such consequences, by itself, would amount to distinct offences committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered view, amount to commission of cruelty within the meaning of Section 498-A at the parental home. The consequences of the cruelty committed at the matrimonial home results in repeated offences being committed at the parental home. This is the kind of offences contemplated under Section 179 CrPC which would squarely be applicable to the present case as an answer to the question raised.”*

Mr. Ali, learned advocate appearing for the State draws the attention of the Court to the statement of the witnesses. It is his submission that the charge-sheet has already been submitted and there are allegations against the present petitioners which do

attract the offences complained of under Section 498A of the Indian Penal Code.

I have considered the submissions advanced by all the parties and I find that the investigation of the case has already been concluded and charge-sheet has been filed before the jurisdictional court.

I have taken into account the nature of the allegations and I find that the main thrust of allegations are against the husband, namely, Kaushik Dey and the allegations against the parents-in-law only surfaced when the complainant alleged regarding act and conduct of the husband Kaushik Dey.

Mr. Ali, learned advocate appearing for the State tried to stress on a particular part of the letter of complaint where it has been alleged that the father-in-law has stated that in case there is litigation there would be mud-slinging which would make life of the complainant miserable. I reiterate that such allegations also if accepted to be true in the background of the facts in which it has been scripted do not express any positive aggression on the part of the father-in-law and the mother-in-law but was in reciprocation to outburst of the complainant. In order to bring any relation of the husband to be an accused within the ambit of Section 498A of the Indian Penal Code some indication must be there that the dispute or difference cropped up because of demand of dowry or any insult inflicted because of dowry reasons or quantum relating to the same. In this case, what I find is that the complainant was frustrated with her relationship with the husband as according to her the husband

was having relationship with several ladies. The complainant was staying alone and had to face challenging situation during the Covid period when she did not get any mental support from the members of her matrimonial home including her parents. This led to the difference being aggravated and according to her, any complaint made to the parents-in-law was reciprocated with an insult to leave the husband.

I have considered the judgment relied upon by Mr. Chakraborty. The said judgment of the Hon'ble Supreme Court was in the background of deciding a jurisdiction as to whether cruelty would authorise the litigation to continue. Needless to state that "cruelty" may have different forms of interpretation under the civil law and the criminal law, what may amount to mental cruelty for the purposes of marriage laws may not amount to mental cruelty for an individual to face the rigors of a criminal trial. The averments made in the letter of complaint and the implication of the present petitioners in the statements under Section 161 of the Code of Criminal Procedure do not satisfy the requirements for facing the trial in respect of the charge-sheet which has been filed in connection with Haridevpur Police Station Case No.380 of 2020 dated 12.08.2020 under Sections 498A/406/34 of the Indian Penal Code.

Accordingly, the further continuance of the proceedings so far as the petitioners are concerned, i.e. Madan Mohan Dey and Maya Dey are unwarranted. Thus, all further proceedings against the present petitioners arising out of Haridevpur Police Station Case

No.380 dated 12.08.2020 under Sections 498A/406/34 of the Indian Penal Code including the charge-sheet filed therein as well as all consequential orders are hereby quashed.

Thus, CRR 217 of 2021 is allowed.

So far as the proceedings against the husband, namely, Kaushik Dey is concerned, there are materials. Learned Magistrate is directed to proceed with trial so far as the husband is concerned.

Pending application, if any, is consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

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

(Tirthankar Ghosh, J.)