

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 321 of 2019
Subham Roy Choudhury & anr.
-vs-
The State of West Bengal & anr.

For the Petitioner : Mr. Ajoy Roy Choudhury

For the State : Mr. S.G. Mukherjee, Ld. P.P.,
Mr. Imran Ali
Ms. Debjani Sahu

Heard on : 30.6.2022

Judgment on : 08.07.2022

Ajoy Kumar Mukherjee, J.

1. Present revisional application has been preferred against impugned order dated 18th December, 2018 passed by learned ACJM, Alipore, South 24 Parganas in connection with T.R. Case No. 130 of 2017 corresponding to ACGR Case No. 4107 of 2016 arising out of Haridevpur Police Station Case No. 424 of 2016 dated 12th July, 2016 under sections 498A, 406 and 34 of the Indian Penal code (IPC) pending before the learned ACJM at Alipore, South 24 Parganas.

2. Petitioners contended in their revisional application that the marriage of opposite party no. 2 took place with the petitioner no. 1 herein on 22th February 2016 under Special Marriage Act 1954. Petitioner no. 2 is the

mother-in-law of opposite party no.2. Opposite party No. 2 stayed in her matrimonial home only for seven days, in two phrases and after discovery of her chronic ailments she withdrew herself from the matrimonial home on 03.03.2016 night and has been residing at her parental home since then. A suit has been filed on 10th May 2016 under section 25 of the Special Marriage Act by petitioner No. 1 for a declaration of nullity of marriage and as a counter blast, opposite party no. 2 lodged a written complain to the Haridevpur Police Station on 1st July, 2016 after delay of 4 ½ months of her last stay at her matrimonial home against the husband/petitioner no.1 and his old parents and for which present proceeding started.

3. Subsequently after completion of investigation police submitted charge-sheet against the present petitioners who are the husband and mother-in-law of the opposite party no. 2 under section 498A, 406 and 34 of the I.P.C. Petitioners filed an application under section 239 of the code of Criminal Procedure 1973 (Code) before the learned ACJM, Alipore, South 24 Parganas for discharging them, but by the impugned order dated 18th December, 2016, learned Additional Chief Judicial Magistrate (ACJM), Alipore, South 24 Parganas rejected the aforesaid prayer for discharge with an observation that there is sufficient materials in the record to frame charge against the accused persons though the learned ACJM, Alipore, South 24 Parganas has not given any reason for rejection of discharge petition, in respect of present petitioners.

4. Petitioner alleged that the petition of complaint which is a counter blast of aforesaid Matrimonial Suit No. 42/2016 filed by petitioner No. 1 herein and the charge sheet based on statements of opposite party no. 2 herein is self

contradictory and without corroboration by any independent material. There is nothing in the record to constitute offence either under section 498A/34 or 406/34 of the I.P.C. Accordingly being aggrieved by the said rejection order in connection with petitioners' prayer for discharge, present revisional application has been preferred.

5. Mr. Ajoy Roy Choudhury, learned counsel appearing on behalf of the petitioner submits that learned trial court has not assigned any specific ground for rejecting the prayer for discharge under section 239 of the code filed by the petitioner No. 1 and petitioner No. 2 herein who are accused No. 1 and accused no. 3 as per written complain. Even if all allegations in F.I.R. and materials in the charge-sheet are taken on its face value, even then it does not disclose any offence against the petitioners. Mr. Roy Choudhury further submits that there is not even a single allegation that the opposite party no. 2 was ever harassed by present petitioners with respect to demand of dowry in sort of cruelty to constitute offence under section 498A, nor such allegation has been leveled in the F.I.R. The offence under section 406 also appears to be absurd in view of the fact that the opposite party no. 2 herself admitted in a written undertaking that she herself taken back all her gold ornaments much before lodging of the aforesaid complain. In spite of that written acknowledgement the opposite party no. 2 has falsely stated in the written complain that all her stridhan property are illegally misappropriated by the petitioners. Opposite party no. 2 has given statement that she felt ill on 02.03.2016 and her in-laws /family members did not take care of her and she called her father and her father admitted her on the same midnight in a

hospital. Actually no such incident happened on 02.03.2016 and hospital record shows that she was admitted in hospital on 04.03.2016 early morning and as such the F.I.R. is false and cannot be entertained. Moreover, the statements made by the witnesses under section 161 of the code does not support allegations revealed in the F.I.R. against present petitioners.

6. Mr. Roy Choudhury further submits that in the charge sheet it has been stated that the complainant was under continuous physical and mental torture by the petitioners for demand of dowry since the date of marriage i.e. from 22.02.2016 till the date of lodging F.I.R. i.e. on 12.07.2016 i.e. for about 142 days inspite of the fact that the complainant made allegations against the petitioners only in respect of four days and she stayed at her matrimonial house only for seven days. On the contrary Petitioners lodged general diary being G.D. No. 1003 dated 11.03.2016 at Haridevpur Police Station when petitioners discovered fraudulent practice adopted by the opposite party No. 2 and her parents in silently removing the movable valuable properties from her matrimonial home without the knowledge of the petitioner. He further submits that the copy of entry ticket at Inox, South City Mall on 27th February, shows that complainant has entered in the said mall at 12:55:40 hrs and stayed till 19:52 hrs, the particular day for which the complainant has made allegations in F.I.R. against her father-in-law for demanding money.

7. Learned counsel appearing on behalf of state submits that Magistrate was justified in rejecting the petitioner's prayer for discharge made under section 239 of the code as there are sufficient incriminating materials against the accused persons/petitioners to go for trial.

8. I have carefully gone through the lengthy written complain as well as materials available in the C.D. It appears that few days after receipt of notice in connection with matrimonial suit filed by petitioner No. 1 for declaration of nullity of marriage, present proceeding has been set in motion. I have also gone through the impugned order dated 18.12.2018. the relevant portion of the said order in support of rejection of discharge application runs as follows:

“Let me peruse the contention of the F.I.R.

In the contention of the F.I.R., the complainant narrated the factual incident which causes harassment to her.

In the second page of the complaint, the complainant stated that there was unlawful demand on the part of the accd no.2, to bring money.

Therefore, there is an element of unlawful demand of the property in the letter of complaint.

I perused the statement u/s. 161 Cr.P.C. of the defacto complainant as well as the witnesses.

The admissibility and the evidentiary value of the value of the statement u/s. 161 Cr.P.C. cannot overshadow the element of facts stated in the letter of complaint made by the defacto complainant at this stage of hearing.

Furthermore, it is pertinent to mention that the letter of complaint is a mere reporting of information as regards the allegation.

It is not the encyclopaedia of the entire offence.

At this stage having regard to the materials in the record as well as in the materials in the C.D., I am of the view that there is sufficient materials existing in the record to frame charge against the accd. persons.

At this stage , this Court is not in a position to allow the prayer of the accd persons.

Hence, the prayer of the accd. persons for discharge u/s.239 Cr.P.C. is rejected.”

9. Accordingly rejection of discharge prayer made by accused No. 2(who is not petitioner herein) has been given, which is on account of unlawful demand made by accused No. 2, but Magistrate has not given any reason why the prayer for discharge made by present petitioners was also rejected.

10. Petitioner herself has admitted about her short stay in the written complain and beside an evasive allegation allegedly occurred on 27.02.2016, when accused no. 2 (who is not a petitioner herein) has called her and demanded money for beautification and repair of their first floor rooms, no allegation regarding demand of money has been attributed against the present petitioners.

11. In connection with allegation of Criminal Breach of Trust the complainant stated in written complain that on 02.03.2016 when the petitioner demanded her gold ornaments, then she replied that she had kept all those ornaments in a bank locker stands in her name. Surprisingly in the next page of written complain the opposite party no. 2 alleged against the petitioners that

the articles given at the time of marriage has been kept by the petitioners in their custody. During investigation police has collected an acknowledgment signed by opposite party no. 2, dated 09.03.2016 wherefrom it appears that the opposite party no. 2 had received all her jewellery long before lodging written complain and she further acknowledged that she had already collected eleven set of jewellery on 28.02.2016 and the same is kept in locker of Allahabad Bank, Nagerbazar without giving notice to her in-laws. On 10.09.2016 during investigation police only seized some household articles, from the house of the petitioners, ownership of which is still not known. Both the parents of opposite party no. 2 have made statements under section 161 Cr.P.C. during investigation and it transpires from their statements that the petitioner no. 1 has denied the marriage by filing the Matrimonial Suit and on hearing this opposite party no.2 became ill but the petitioners did not make proper arrangement for her treatment nor they took any information about her state of health and such incidents made opposite party no. 2 frustrated and for which present criminal proceeding started.

12. The bald allegations made against present petitioners by opposite party no.2 appears to suggest the anxiety of the wife to rope present petitioners due to her matrimonial discord. I do not find any legal basis from the materials in FIR or from the case diary for the Magistrate to take cognizance against present petitioners. Opposite Party No.2 admittedly was not living with the petitioners and none of the alleged offences under section 498A or 406 attracts in the present context against petitioners. The complainant alleged in an omnibus way that “all accused harassed her mentally and did not take care of her health

when she felt ill, due to petitioners denial about her marriage”. No specific or distinct allegation has been attributed against present petitioners in furtherance of the general and omnibus allegations made against petitioners.

13. In ***Kahkashan Kausar @ Sonam and others vs. State of Bihar & others*** reported in **2022 SCC OnLine SC 162** Apex Court noted the following observation:

“18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A 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”.

“19. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, 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”.

14. In ***Preeti Gupta and another Vs. State of Jharkhand and another*** reported in **(2010) 7SCC 667** the Hon’ble Supreme Court observed as follows :

“32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come

across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern”.

“33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases”.

“34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations”.

“35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinised with great care and circumspection”.

“36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful.”

11. In **Neelu Chopra and another Vs. Bharti** reported in (2009) 10 SCC

184 Hon’ble Apex Court came to the finding as follows:

“9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.”

“10. When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of the process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein, on the basis of a vague and general complaint which is silent about the precise acts of the appellants.”

12. In *Geeta Mehrotra and another Vs. State of Uttar Pradesh*

and another reported in **(2012) 10 SCC 741** Hon’ble Apex Court was pleased to observe:-

“18. Their Lordships of the Supreme Court in Ramesh case [(2005) 3 SCC 507 : 2005 SCC (Cri) 735] had been pleased to hold that the bald allegations made against the sister-in-law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible. It was held that neither the FIR nor the charge-sheet furnished the legal basis for the Magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge-sheet, none of the alleged offences under Sections 498-A, 406 IPC and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister-in-law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.”

13. In view of aforesaid consistent observation made by the Apex Court, I am of the view that the allegations made in the written complain are not only vague and omnibus but also bereaved of any specific details. The materials available in the record are not at all sufficient to form an opinion that there is ground for presuming that the present petitioners have committed any offence

far from committing offence either under section 498A or under section 406 I.P.C. There is reason to believe that the veiled object behind the lame prosecution is the counter blast of the Matrimonial Suit filed by the petitioner no.1 for declaration of nullity of marriage. The allegations against present petitioners is unfounded and in order to secure the end of justice and preventing the abuse of the process of the criminal court, impugned order dated 18.12.2018 in respect of present petitioners is hereby set aside. The petitioner are accordingly discharged from T.R. Case No. 130 of 2017 corresponding to ACGR Case No. 4107 of 2016 arising out of Haridevpur Police Station Case No. 424 of 2016 dated 12th July, 2016 under sections 498A, 406 and 34 of the Indian Penal code pending before the learned ACJM at Alipore , South 24 Parganas.

14. CRR 321 of 2019 along with connected application are accordingly disposed of.

15. However, there shall be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(AJAY KUMAR MUKHERJEE, J.)