

Form J(1)

**IN THE HIGH COURT AT CALCUTTA  
Criminal Revisional Jurisdiction  
Appellate Side**

**Present :  
The Hon'ble Justice Bibek Chaudhuri**

**C.R.R. 1183 of 2022**

***Kajal Bandyopadhyay & Anr.  
Vs.  
The State of West Bengal & Anr.***

**For the petitioner : Mr. Kusal Kumar Mukherjee, Adv.**

**For the O.P. : Mr. Arindam Sen, Adv.  
Mr. Saurav Basu, Adv.**

**For the State : Mr. Saswata Gopal Mukherjee, Ld.P.P.  
Mr. Imran Ali, Adv.  
Mr. Debjani Sahu, Adv.**

**Heard on : 10.11.2022**

**Judgment On : 10.11.2022.**

**Bibek Chaudhuri, J.**

The learned Advocate for the petitioners craves leave to amend the cause title of the instant revision. Leave is granted.

Petitioner No.1 is the mother-in-law and petitioner No.2 is the sister-in-law of the opposite party No.2/de-facto complainant. On filing of a charge-sheet under Sections 498A/323/325 of the Indian Penal Code in connection with Jangipara Police Station Case No.214/2018 dated 30<sup>th</sup> September, 2018 corresponding to G.R.

No.2017/18, the petitioners are slated to face trial as accused persons.

By filing the instant revision, the petitioners have prayed for quashing of the above-mentioned criminal proceeding on the following grounds:-

- (1) No ingredient of offence under Section 498A of the Indian Penal Code has been established during investigation against the petitioners.
- (2) No prima facie case has been made out against the petitioners under Sections 323/325 of the Indian Penal Code.

The learned Advocate for the petitioners has not disputed the factum of marriage between the de-facto complainant and one Subhendu Bandhapadhyay, the principal accused who happens to be the son and elder brother of the petitioner No.1 and 2 herein under Special Marriage Act. It is also not in dispute that even after marriage, the de-facto complainant was not accepted by her husband and matrimonial relations/petitioners on the ground that marriage between the de-facto complainant and the said Subhendu Bandhapadhyay was an intercaste marriage and the de-facto complainant being a member of an inferior caste was not accepted by the family members of her husband.

It is submitted by the learned Advocate for the petitioners taking me to the copy of the written complainant that after sometimes of the registration of marriage, the principal accused was insisted upon the de-facto complainant that she dissolved the marriage by divorce as it was not possible for him to accept the de-facto complainant as his wife. It is also stated by the de-facto complainant that she earns her livelihood by private tuition. On 25<sup>th</sup> September, 2018 when she was teaching privately, her husband appeared there and asked her to come out of her student's house and assaulted her physically by feast and blows and also tried to commit murder by throttling. When the de-facto complainant could understand that her husband would not accept her, she went to his house and started staying there for few days. At that time the present petitioners treated her with cruelty both physically and mentally, did not offer her with food and finally drove her away from her room keeping the said room under lock and key.

On the basis of the said complaint, police registered a case under Sections 498A/323/325/307 of the Indian Penal Code.

It is submitted on behalf of the petitioners that the FIR as well as the statement made by the witnesses before the Investigating Officer under Section 161 of the Code of Criminal Procedure does not disclose any offence under Section 498A of the Indian Penal Code.

There is also no prima facie evidence as revealed from the documents and statements of the witnesses supplied to the petitioners under Section 207 of the Code of Criminal Procedure that the petitioners caused hurt or grievous hurt to the de-facto complainant. Therefore, charge-sheet was filed without any prima facie material and the same is liable to be quashed. In support of his contention, the learned Advocate for the petitioners refers to a decision of the Hon'ble Supreme Court in the case of ***Bhaskar Lal Sharma & Anr. Vs. Monica*** reported in ***(2010) 1 Supreme Court Cases (Cri) 383***. He specially refers to Paragraphs 27 to 30 of the above-mentioned report which are quoted below:-

"**27.** Parliament by Act 46 of 1983 with a view to combat the menace of dowry deaths and harassment to woman at the hands of her husband or his relatives introduced Section 498-A and Section 304-B in IPC. Section 498-A reads as under:

*"498-A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."*

**28.** The 'Explanation' appended to Section 498-A thereto defines cruelty to mean:

- (i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (ii) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

**29.** Thus, the essential ingredients of Section 498-A are:

1. A woman must be married.
2. She must be subjected to cruelty.
3. Cruelty must be of the nature of:
  - (i) any willful conduct as was likely to drive such woman:
    - a. to commit suicide;
    - b. cause grave injury or danger to her life, limb, either mental or physical;
  - (ii) harassment of such woman,
    - (1) with a view to coerce her to meet unlawful demand for property or valuable security,
    - (2) or on account of failure of such woman or by any of her relation to meet the unlawful demand;
  - (iii) woman was subjected to such cruelty by:

- (1) husband of that woman, or
- (2) any relative of the husband.

For constitution an offence under Section 498A of the IPC, therefore, the ingredients thereof must be held to be existing.

**30.** For proving the offence under Section 498-A IPC, the complainant must make allegation of harassment to the extent so as to coerce her to meet any unlawful demand of dowry, or any wilful conduct on the part of the accused of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health. We do not find any such allegation has been made or otherwise can be found out so as to enable us to arrive at an opinion that the appellants prima facie have committed such an offence. The complaint petition must also be read with several other documents which form part of the complaint petition. The children from the first wife of Vikas were with Monica. Vikas affirmed an affidavit so as to enable Monica to apply for their passports. Vikas, therefore, wanted to have children with them.”

Placing reliance upon the above-mentioned decision of the Hon’ble Supreme Court, it is submitted by the learned Advocate for the petitioners that in order to implicate an accused in an offence under Section 498A of the Indian Penal Code, there must be prima facie evidence that the married woman is subjected to cruelty on

demand of dowry. In other words, it is contended on behalf of the petitioners that Explanation I and Explanation II of Section 498-A are to be read conjointly and they are not disjunctive ingredients to attract Section 498A of the Indian Penal Code. It is submitted by the learned Advocate for the petitioners that there must be prima facie evidence produced by the prosecution that the victim/de-facto complainant was subjected to cruelty which was in the nature of

(i) any wilful conduct as likely to drive such woman:

a. to commit suicide;

b. Cause grave injury or danger to her life, limb, either mental or physical and also harassment of such woman with a view to coerce her to meet unlawful demand for property or valuable security. Thus, according to the learned Advocate for the petitioners, Section 498A of the Indian Penal Code will attract only in a case where cruelty either physical or mental is meted out in order to coerce the married woman to meet unlawful demand or valuable security. Since there is no ingredient against the petitioners, charge under Section 498A of the Indian Penal Code is liable to be quashed.

I am afraid that I am not in a position to accept such submissions made by the learned Advocate for the petitioners and appears to this Court that such submission is made by the learned

Advocate for the petitioners on misconception and misleading of Paragraphs 29 and 30 of **Bhaskar Lal Sharma (supra)**.

"Explanation to Section 498A defines cruelty", Explanation i speaks about any wilful conduct as is likely to drive such woman to commit suicide or to cause grave injury or danger to her life, limb, either mental or physical and explanation ii speaks harassment of a married woman with a view to coerce her to meet unlawful demand for property or valuable security. The learned Advocate for the petitioners failed to appreciate the observation made by Hon'ble Supreme Court in Paragraph 30 of the said report which runs thus:-

"For proving the offence under Section 498-A IPC, the complainant must make allegation of harassment to the extent so as to coerce her to meet any unlawful demand of dowry, OR any wilful conduct on the part of the accused of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health."

The said two explanations are disjunctive and speaks of different and distinct acts perpetrated upon the married woman in order to cruelty upon her.

Thus, even if there is no allegation of demand of dowry, if prima facie evidence shows that a married woman is subjected to any

wilful conduct to cause grave injury or danger to her life, limb, either mental or physical, it amounts to cruelty.

I have perused the documents received by the petitioners from the Court below under Section 207 of the Code of Criminal Procedure. I have also perused the Case Diary. It is needless to say that mere refusal to accept a lady as the wife of his/her son on the ground that the said lady belongs to an inferior caste than her husband, is ample evidence of cruelty that may cause grave injury to the mental health of the de-facto complainant. Under such backdrop, no overt act or physical act is necessary to attract the offence under Section 498A of the Indian Penal Code.

With regard to the charge under Section 323/325 of the Indian Penal Code, this Court finds that the Investigating Officer collected injury report of the de facto complainant during trial. In the injury report, the de-facto complainant made specific allegations of physical assault against her husband. No allegation has been made against the petitioners. The witnesses whose statements recorded under Section 161 of the Code of Criminal Procedure also have not made any allegation of physical torture against the petitioners.

Therefore, this Court is of the view that the petitioners are liable to face trial under the charge of Section 498A of the Indian Penal Code. However, the ingredients under Sections 323/325 of the

Indian Penal Code being absent against the petitioners, charge-sheet filed against them under Section 323/325 of the Indian Penal Code is quashed.

Thus, the instant revision is allowed in part on contest.

The Trial Court shall act in accordance with the observations made hereinabove in the instant revision and proceed with the trial against the petitioners according to law.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisites formalities

**(Bibek Chaudhuri, J.)**

***Mithun De/  
A.R. (Ct).  
SI No.35.***