IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1248 of 2021

Subrata Dash

Vs

The State of West Bengal and Anr.

For the Petitioners	: Mr. A.K. Bhattacharyya. Mr. Sanjib Kumar Mukhopadhyay, Ms. Aparupa Bhattacharya.
For the State	: Mr. P.K. Datta, Md. Kutubuddin, Mr. S. Deb Roy.
For the O.P. no. 2	: Mr. K. Gupta, Ms. M. Gangopadhyay, Mr. A. Basu Chowdhury.
Heard on	: 16.11.2022
Judgment on	: 06.12.2022

Shampa Dutt (Paul), J.:

The revisional application has been filed by petitioner/husband praying for quashing of Titagarh Police Station Case no. 154/2021 under Section 498A/406/120B of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Barrackpore filed by the opposite party no. 2.

The petitioner's case is that he is a permanent resident of Hongkong since 2013 and is staying outside India since 2006 for the work. The petitioner along with the opposite party no. 2 never resided within the jurisdiction of Barrackpore except on 29th November, 2002 when their marriage was solemnized. No torture was inflicted upon the opposite party no. 2/wife. The ingredients required to constitute the offence as alleged are not present in this case and as such the petitioner is not liable to be prosecuted in the case under reference. The opposite party has not filed any medical document in support of her complaint. It is the further case of the petitioner that the jurisdiction under Section 177 of the Code of Criminal Procedure, 1973 provides "every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed."

It is submitted that "the particular incident did not happen at the petitioner's father-in-law's house which is situated within the territorial jurisdiction of Titagarh Police Station".

The specific case of the petitioner is that no part of the alleged cause of action or the alleged offence arose within the jurisdiction of Titagarh Police Station and as such the FIR herein is liable to be quashed.

The opposite party/wife is also a permanent resident of Hongkong since 2013 but has fraudulently claimed to be a resident of Titagarh.

Mr. A. K. Bhattacharya, learned Counsel for the petitioner submits that the FIR is bad in law on the ground of lack of jurisdiction and has been filed with ulterior motive in spite of the fact that the petitioner/husband pays 72% of his income towards maintenance to his wife (opposite party) and daughter.

The allegations of torture and other offence in the FIR is totally false and baselelss. Thus the FIR is liable to be quashed.

The following rulings have been relied upon on behalf of the petitioner/husband.

(a) ***Suresh vs. Mahadevappa Shivappa Danannava and Anr., [(2005) 3 SCC 670]***, where in the Supreme Court held:-

> *"Held, the said complaint was not at all maintainable at this distance of time – It was liable to be dismissed on the question of inordinate laches on the part of the complainant himself."*

(b) ***Kishan Singh (D) through L.R.S. Vs. Gurpal Singh & Ors., (AIR 2010 Supreme Court 3624)***, where in the Court held:-

> *"However, since delay in filing F.I.R. was not explained, criminal proceedings amount to an abuse of process of law."*

(c) ***Madhavrao Jiwajirao Scindia and Ors. vs. Sambhajirao Chandrojirao Angre and Ors., [(1988) 1 SCC 692]***, where in the Court held:-

> *"On facts and in view of strained relationship between settler of the trust and the co-trustee and his wife, held, High Court justified in quashing the proceedings as ingredients of criminal offence wanting."*

(d) ***Preeti Gupta & Anr. Vs. State of Jharkhand & anr., (2010 AIR SCW 4975)***, where in the Court held:-

> *"Appellants residing at different place – Neither visited place of incident – Nor lived with complainant and her husband – Their implication in complaint is meant to harass and humiliate husband's relatives – Permitting complainant to pursue complaint would be abuse or process of law – Complaint, held, liable to be quashed."*

(e) ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors., (1992 CRI.L.J. 527)***, where in the Court held:-

> *"**108**. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad*

kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(f) ***Robert John D'Souza and Ors. vs. Stephen V. Gomes and Anr., [(2015) 9 SCC 96]***, where in the Court held:-

> *"Criminal breach of trust and cheating – Essential ingredients – What are – Entrustment of property/Acting as banker, factor, agent, etc./Inducement of delivery of property by deception – None of the ingredients being present, proceedings quashed."*

(g) ***S.P. Chengalvaraya Naidu vs. Jagannath,*** where in the Court *on* 27th October, 1993 held:-

> *"It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law."*

(h) ***Dalip Singh vs. State of U.P. and Others, Civil Appeal No. 5239 of 2002***, where in the Supreme Court held:-

> *"We are amazed at the degree of audacity with which Shri Sunil Kumar Singh could make a patently false statement on oath. From what we have mentioned above, it is clear that in this case efforts to mislead the authorities and the courts have transmitted through three generations and the conduct of the appellant and his son to mislead the High Court and this Court cannot, but be treated as reprehensible. They belong to the category of persons who not only attempt, but succeed in polluting the course of justice."*

(i) ***Hamza Haji vs. State of Kerala & Anr., Appeal (civil) 3535 of 2006***, where in the Court held:-

> *"In any event, as we have indicated, this is a fit case where we should clearly decline to exercise our jurisdiction under Article 136 of the Constitution of India to come to the aid of the appellant to secure to him the fruits of the fraud practiced by him on the Forest Tribunal and the High Court."*

The opposite party no. 2/ wife through her counsel Mr. K. Gupta has submitted that she denies and disputes the total case as made out in the revisional application except what are matters of record. Admittedly the marriage took place on 29.11.2002. A daughter was born in 2004 (presently 17 years of age).

The petitioner has been residing in Hong Kong since 2009 for work and subsequently he has become a permanent resident of Hong Kong since 2018. The opposite party no. 2 herein is a permanent resident of Hong Kong since 2019. Before that she used to visit Hong Kong only during daughter's school holidays on tourist Visa till 2012. **After that since 2013 she was on husband's dependant visa**.

The opposite party no. 2 lodged a FIR against the petitioner husband, culminating in Titagarh Police Station Case No. 154 of 2021 dated 04.03.2021 under Sections 498A/406/120B of Indian Penal Code, 1860, when she was driven out of her matrimonial home and was forced to return to her parental house as she was left with no money to support herself or her daughter. She was on the verge of committing suicide but was counseled by her parents to be strong enough to take care of her daughter who had no one but her since the petitioner husband, due to his extra-marital affair, was negligent of his own daughter's welfare. She then returned to Hong Kong after 6 months of her stay in India to look after her daughter.

That soon after the marriage, over petty issues the petitioner used to torture the opposite party no. 2 herein, both mentally and physically. In course of time, after their daughter was born, the behavior of the in-laws of the opposite party no. 2 also worsened and they used to ill-treat and mis-behave with her at the provocation of the petitioner.

The petitioner has been in an extra-marital relationship with Ms. Parama Sengupta since 2016, who happens to work with him in the same company.

The said conduct has caused humiliation and mental cruelty to the opposite party no. 2/wife. The petitioner by practicing fraud has taken away all her property papers, important documents and Stridhan from their joint locker in HDFC bank, Pune. As their daughter studies in a school in Hongkong, the opposite party stays with her in Hongkong in a separate accommodation. The petitioner/husband has abandoned them since 5th January 2018 to reside with his mistress in Hongkong.

During her stay at her parental house in 2021, upon "being emotionally harassed, tormented and being devastated beyond words", the Opposite Party no. 2 lodged a complaint on 4.3.21 against her husband who is the petitioner herein, with Titagarh Police Station which gave rise to Titagarh Police Station Case No. 154 of 2021 dated 04.03.2021 under Section 498A/406/120B of Indian Penal Code, 1860, and is presently pending in the Court of the learned Additional Chief Judicial Magistrate at Barrackpore.

Finally, relying upon the following judgments the prayer of the opposite party is for dismissal of the present revisional application.

(a) ***Rupali Devi vs. State of Uttar Pradesh and Ors., [(2019) 5 Supreme Court Cases 384]***, where the Supreme Court held:-

> *"..........adverse effects on mental health in parental home or other place of shelter though on account of acts committed in matrimonial home would amount to commission of cruelty within the meaning of Section 498A IPC."*

(b) ***Thota Venkateswarlu vs. State of Andhra Pradesh through Principal Secretary and Anr., (2011) 9 Supreme Court Cases, 527*** "sanction of the Central Government is required for inquiring into and trying such offences in India, where accused has committed some offences outside India and some within India.

The Court held that:-

> ***"No sanction is required till commencement of trial."***

Learned Counsel for the opposite party no. 2 has relied upon Section 178 of the Code of Criminal procedure.

Section 178 of Cr.P.C. Place of inquiry or trial.

> *(a) When it is uncertain in which of several local areas an offence was committed, or*
> *(b) Where an offence is committed, partly in one local area and partly in another, or*

> *(c) Where an offence, is a continuing one, and continues to be committed in more local areas than one, or*
> *(d) Where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.*

It is submitted that the petitioner has at different times come to the parental house of the opposite party no. 2 and committed acts of cruelty, So, the petitioner's claim of exceeding jurisdiction does not hold any ground.

The learned counsel for the opposite party no. 2 has further brought the notice of this Court to **Section 3 of the Indian Penal Code**.

Sec. 3 Indian Penal Code:-

Punishment of offences committed beyond, but which by law may be tried within, India.

> *"Any person liable, by any [Indian law] to be tried for an offence committed beyond [India] shall be dealt with according to the provisions of this Code for any act committed beyond [India] in the same manner as if such act had been committed within [India]."*

In their affidavit in reply, the petitioner/husband has again denied the opposite party/wife's case except what are matters of record including his relationship with Ms. Parama Sengupta.

It is further contended that as the present complaint lacks jurisdiction, the said criminal proceedings is liable to be quashed as the said proceedings is an abuse of process of law.

The counsel for the State Mr. P.K. Dutta is present and files the case diary along with a memo of evidence.

On hearing the counsels at length and on perusal of the materials on record including the case diary the following admitted facts are before this Court:-

(a) The parties got **married on 29.11.2002** within the jurisdiction of Titagarh police.

(b) The **written compliant** in this case has been **filed on 04.03.2021** under Sections 498A/406/120B IPC.

(c) The parties have a child who is presently 17 years old.

(d) The marriage between the parties still subsists (20 years).

(e) The opposite party's case is that she is a permanent resident of Hongkong since 2019, but used to visit Hongkong only during daughter's school holidays on Tourist Visa till 2012. Since 2013 she was on husband's dependant visa since 2013.

(f) So till 2019, when she became a permanent resident of Hongkong the opposite party/wife stayed in Hongkong on the petitioner/husbands dependant visa.

(g) She still resides in a separate accommodation in Honkong with her daughter, who studies there.

(h) Her case is that the petitioner abandoned them on and from 5th January, 2018.

The opposite party has stated that she had come to her parental home in 2019 and the immigration stamp on the petitioner's passport will show that he was also present in Kolkata at that time and he allegedly threatened her and her father.

In 2021, she again came to India and was hopeful that the petitioner would improve his behavior and character. He allegedly has been in an extra marital relationship since 2016 and in the same year he also took away all her 'Stridhan' from their Joint Bank locker in HDFC Bank, Pune.

The opposite party no. 2 by a letter dated 12.08.2021 has prayed for change of the Investigating Officer in respect of the above case and by another letter through her advocate dated 18.09.2021 made complaints against the Investigating Officer.

The offences alleged are under Sections 498A/406/120B of the Indian Penal Code.

Section 498A of the Indian Penal Code.

> *"**498A. 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.*
>
> *Explanation.—For the purpose of this section, "cruelty" means—*
>
> *(a) 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*
>
> *(b) 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."*

The ingredients required to constitute the said offence are:-

> *"**Ingredients of offence.** — The essential ingredients of the offence under Sec. 498A are as follows:-*
> *(1) A woman was married;*
> *(2) She was subjected to cruelty;*
> *(3) Such cruelty consisted in—*
> *(i) Any wilful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical;*
> *(ii) harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the lawful demand;*
> *(iii) the woman was subjected to such cruelty by her husband or any relation of her husband."*

Section 406 of the Indian Penal Code.

> *"**406. Punishment for criminal breach of trust.**—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."*

The offence of "criminal breach of trust" is described under Section 405 IPC.

> *"**405. Criminal breach of trust.**—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be*

discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Ingredients of offence. — The essential ingredients of the offence under Section 406 are as follows:

(1) There must be an entrustment, there must be misappropriation or conversion to one's own use, or use in violation of a legal direction or of any legal contract;

(2) The accused was entrusted with the properly or domain over it;

(3) He dishonestly misappropriated or converted to his own use such property;

(4) He dishonestly used or disposed of that property or willfully suffered any other person to do so in failure of —

(a) Any direction of law prescribing the mode in which such trust is to be discharged, or

(b) Any legal contract made touching upon the discharge of such trust."

*"**120B. Punishment of criminal conspiracy.**— (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [2][imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term

> *not exceeding six months, or with fine or with both."*

The definition of 'criminal conspiracy' is under Section 120A IPC.

> *"**120A. Definition of criminal conspiracy.** — When two or more persons agree to do, or cause to be done, —*
>
> *(1) an illegal act, or*
>
> *(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*
>
> *Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.*
>
> *Explanation. —It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."*

It is the specific case of the petitioner that as no part of the alleged cause of action arose within the jurisdiction of Titagarh Police Station, the FIR is liable to be quashed in view of Sec. 177 of Cr.P.C., 1973.

This stand of the petitioner has been defended by the opposite party by relying upon **Section 3 of the Indian Penal Code**.

> *"**3. Punishment of offences committed beyond, but which by law may be tried within, India.—** Any person liable, by any Indian law to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India."*

And

Section 178 of the Cr.P.C. which lays down:-

> *“**178. Place of inquiry or trial. —***
> *(a) When it is uncertain in which of several local areas an offence was committed, or*
> *(b) where an offence is committed partly in one local area and partly in another, or*
> *(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or*
> *(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.”*

From the allegations/statements in the written complaint, the ingredients required to constitute an offence under Section 498A of the IPC appears to be prima facie present in the present case; which of course is subject to trial. Allegation against the petitioner include, the desertion of the opposite party and their child (mental cruelty).

The ingredients required to constitute an offence under Section 406/120B is also prima facie present as there is an allegation of taking away the opposite party’s Stridhan from their joint locker in 2016, when he also allegedly started his extra marital affair.

Thus the question of jurisdiction in this case, in the facts and circumstances herein is answered in the affirmative in view of Sections 3 IPC and Section 178 Cr.P.C.

The essential ingredients required to constitute the offences as alleged are therefore prima facie present making out a cognizable offence against the petitioner/husband and thus should not be quashed in the interest of justice.

But it is also before the Court that the parties are married for 20 years having a child, and the opposite party and their child are also permanent residents of Hongkong since 2019 and till 2018 they were living in Hongkong as dependants of the petitioner. The delay in lodging the case has been defended by stating that, there was hope till 2020 that their marriage would improve, but finally the case has been filed.

All these facts, makes this a case fit for mediation.

The Supreme Court in ***Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others, 2021 SCC Online SC 315***, held:-

> *"i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*
>
> *ii) Courts would not thwart any investigation into the cognizable offences;*
>
> *iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*
>
> *iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).*

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;"

In Ranveer Upadhyay & Anr. Vs. State of Uttar Pradesh & Anr., Special Leave Petition (CNL) No. 2953 of 2022, the Court held:-

*"**39**. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. **Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court***

> ***does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.***"

In the present case there is substance in the allegations and materials exists to prima facie make out a cognizable offence and as such the proceedings in this case should not be quashed and this is a fit case where the inherent powers of the Court should not be exercised.

Accordingly **the criminal revision stands dismissed** with a direction upon the learned Additional Chief Judicial Magistrate, Barrackpore to **refer the parties for mediation** to a mediator appointed by the concerned District legal Service Authority, on a date (period) convenient to the parties preferably within three months from the date of communication of this order.

Let a copy of the judgment along with the LCR (if any) be sent to the Trial Court and the concerned District Legal Services Authority at once.

No order as to costs.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)

Later on:

After delivering of judgment the learned counsel for the petitioner prays for stay of the said judgment and order.

But considering the circumstances and the other materials, this Court finds no reasons to stay the operation of the judgment and order under appeal. Prayer for stay stands refused.

(Shampa Dutt (Paul), J.)