

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.R. 1917 of 2016

Subrajit Sarkar @ Subrajit Sarkar & Ors.

Versus

The State of West Bengal & Anr.

For the petitioners

: Ms. Karabi Roy.

For the State

: Mr. Saswata Gopal Mukherjee,
Ld. P.P
Mr. Imran Ali,
Ms. Debjani Sahu.

Hearing concluded on: 15/09/2022

Judgment on: 21/09/2022

Rai Chattopadhyay, J. :

1. Aggrieved husband of the complainant, her parent-in-law and married sister-in-law living in separate mess, have preferred to file the present case under Section 482 read with Section 401 of the Criminal Procedure Code, 1973, challenging initiation and process of the police case at the behest of the opposite party no.2/complainant/wife.

2. The petitioners have prayed in this case, for an order of the court quashing the proceedings and charge sheet filed against them in Jalangi PS Case No.368 of 2015 dated 14.04.2015 under Section 498A IPC, 1860.

3. Not all the details of unhappy married life of the petitioner no.1 and opposite party no.2 may be discussed in this case. Suffice to say that they were married in the year of 2005 but the same was never peaceful. They have allegations and counter allegations against each other in their matrimonial life. Like the petitioner no.1 contends that since after marriage he has been regularly instigated and forced to severe relationship with his parents and family, that the opposite party no.2 was not at all dutiful of the members of family of her husband and was always hostile towards fulfillment of marital obligation. He has further states that the opposite party no.2 has left her matrimonial home without anybodies knowledge, consent and only according to her own whims. He stated further that all his endeavor to bring his wife back to her matrimonial home went in vain due to adamant attitude of the opposite party no.2.

4. Contrarily the opposite party no.2/complainant has summarized her allegations in the written complaint filed by her in the court of Chief Judicial Magistrate at Murshidabad. The said complaint dated April 2, 2015, has stated inter alia, that, since after her marriage she has been subjected to extreme torture by the present petitioners, on demand of more dowry of Rs.1 lakh, over and above the monetary and other valuable gifts given to the

petitioner's family by the parents of opposite party no.2 at the time of marriage. Details of the said marital gifts are narrated in the complaint itself. It is specifically stated that her inability to remit such an amount has subjected her to both mental and also physical torture perpetrated by the petitioner no.1 and his family. She was otherwise harassed and tortured by not being allowed to keep any contact with her matrimonial family members and also by the undue bludgeon of her husband to dissolve the marriage by a decree of divorce. The opposite party no.2/complainant has stated specifically in the complaint that on February 27, 2015, at the evening she was subjected to immense physical abuse at the instance of all the petitioners and immediately thereafter on the next date, i.e, February 28, 2015, she was forced to leave her matrimonial home with her brother. Since then she has been leaving separated from her husband and matrimonial family members, of which her husband has never been bothered about or taken any steps to bring back peace in their life.

5. These being the allegations and counter allegations regarding the unhappy matrimonial life of the petitioner no.1 and opposite party no.2, have given rise to the genesis of this case, that is, the complaint made by the opposite party no.2 as stated above, before the court of Chief Judicial Magistrate at Murshidabad. All the present petitioners were made accused persons in that case. According to the direction of the court the police registered Jalangi PS Case No.368 of 2015 dated 14.04.2015 under Section 498A IPC.

6. After investigation, police has submitted charge sheet, in the said police case.

7. On this factual background the petitioners have come up with the present case with the prayer to quash the entire proceedings in connection with Jalangi PS Case No.368 of 2015 dated 14.04.2015 under Section 498A IPC, on the grounds that the complainant/opposite party no. 1/wife has acted only under ulterior motives and malice in filing the complaint against all of the petitioners, that the complaint was full of untrue statement and baseless facts which ought not have been taken into consideration by the trial court in order to direct and investigation into the allegations, that the investigation conducted by police has been perfunctory without following the rule of law or natural justice, that the malicious proceedings initiated by the opposite party no.2 is not tenable in the eye of law and that the same is liable to be quashed by an order of this court.

8. Learned advocate on behalf of the petitioner has referred to a document annexed with the petition, that is, a plaint in Matrimonial Case No.272 of 2015, in the court of District Judge Murshidabad. It is found from the said document that the Matrimonial Case No.272 of 2015 was filed by the opposite party no.2 under Section 13 of the Hindu Marriage Act, 1956, praying for desolution of her marriage with the petitioner no.1 by decree of divorce. The said suit has ended in delivering an ex-parte order and decree by the concern court on February 3, 2016, by dint of which the matrimonial court

decreed the suit. It is stated that by dint of the said decree the marriage tie between the petitioner no.1 and opposite party no.2 has been severed since February 3, 2016.

9. Learned advocate on behalf of the petitioners has also relied on certain averments made in the plaint in the said matrimonial suit like the fact that opposite party no.1 has stated there on affidavit that she left her matrimonial home ultimately on February 28, 2012, over and above the wife's allegations of torture etc, as made therein.

10. Learned Advocate on behalf of the petitioners has further pointed out the statement of the opposite party no.2 as made in her complaint before the court of Chief Judicial Magistrate, at Murshidabad dated April 2, 2015, that she has mentioned the date of her leaving matrimonial home to be February 28, 2015, which is glaringly contrary with the fact she disclosed in her matrimonial suit.

11. It is further submitted that since after the opposite party no. 2 deserted her client and with the intention to resume their conjugal life, petitioner no. 1 sent a letter through his advocate on March 9, 2015, asking the opposite party no. 2, to return to her matrimonial home. According to the Learned Advocate, immediately thereafter the complaint was filed by opposite party no.2 on April 2, 2015, as a counterblast thereof, which is full of untrue facts and only malicious.

12. It is submitted that firstly, the marriage between two parties is no more in existence by dint of the court's decree dated February 3, 2016. Secondly, that the contradictions of the relevant and important fact as stated by the opposite party no. 2 in her plaint in matrimonial suit and complaint in Magistrate's court respectively, should only indicate about the concoction of the facts she has brought against the petitioners with ulterior motive, before all the respective fora. It is submitted that the same suggests complainant's malice only in order to thrash a criminal proceeding against the present petitioners which otherwise has got no sanctity in absence of substantiable facts, so far as ingredients of offences under Section 498A, are concerned.

13. Learned Advocate, on behalf of the petitioners have prayed for quashing of the proceeding before the trial court as mentioned above.

14. During her arguments Learned Advocate on behalf of the petitioners has relied on the following judgments, the propositions of which, according to her, supports her case:

- (i) **Kahkashan Kausar @ Sonam & Ors. vs. State of Bihar & Ors.** reported in **(2022) 6 SCC 599**.
- (ii) Unreported judgment of this court in **F.A.M Aminuzzaman Chowdhury @ Fama Chowdhury & Ors. vs. State of West Bengal & Anr.** delivered on August 3, 2022 in C.R.R 3221 of 2018.

- (iii) Unreported judgment of this court in-re **Manoj Kumar Agarwal & Ors.** delivered on March 3, 2021 in C.R.R 397 of 2015.

15. State has been represented in this case. However, opposite party no. 2 is not represented, in spite of due and completed service.

16. So far as opposite party no. 2 is concerned the affidavit of service filed by the petitioners in court has shown the service to be completed. Hence, there is no impediment to accept the same as good service, though the said opposite party is not represented in this case.

17. Learned advocate on behalf of the state has, however, strongly controverted the submissions made on behalf of the petitioners and challenges the grounds and prayer made in this case.

18. It has submitted on the basis of the materials available in CD in connection with Jalangi PS Case No. 368 of 2015 dated April 14, 2015 under Section 498A IPC, that during investigation the witnesses have duly corroborated the allegations made by the opposite party no. 2/complainant in her complaint dated February 4, 2015. He has controverted the submission of the petitioners regarding non availability of any medical report by saying that infliction of mental torture shall also entail the petitioners to come under the four corners of Section 498A IPC. According to him during investigation sufficient materials are collected in the form of witness's statement and the statement of the complainant/victim regarding continuous and excessive

infliction of mental torture upon her by the present petitioners. Thus according to the learned advocate on behalf of the state the grounds pleaded by the petitioners in this case shall have no legs to stand upon and on the basis of the investigation done, the petitioners are obviously and unquestionably to face trial in this case.

19. In the judgment of **Kahkashan Kausar @ Sonam & Ors. vs. State of Bihar & Ors.**, the Hon'ble Apex Court has been pleased to hold as follows:

“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.”

Coordinate Benches of this court, in the judgments as relied on by the petitioners, have followed the ratio of the Hon'ble Apex Court's verdict, as above.

20. Therefore the law regarding the point involved in this case is very much well settled, that, vague and omnibus allegations should not lead up to conduct of a trial pursuant to any such complaint. On the touch stone of this settled principle of law the facts of the present is now required to be examined.

21. The opposite party no.2/wife filed her written complaint before the Chief Judicial Magistrate at Murshidabad under Section 156(3) Cr.P.C, 1973, alleging inter alia, taking dowry by the present petitioners at the time of her marriage, inflicting mental as well as physical torture upon her, so much so that her life and well being was at threat and she had to leave her matrimonial home.

22. As it has been rightly pointed out on behalf of the petitioners, opposite party no.2/wife has stated on affidavit before a court of law regarding her date of leaving her matrimonial home differently than the same as in the present complaint. In her complaint under Section 156 (3) Cr.P.C, 1973, before the Chief Judicial Magistrate she has stated on affidavit that she was forced to leave her matrimonial home on 28.02.2015, whereas before the matrimonial court in a suit she has declared such date to be 27.02.2012. No doubt this has prima facie shown about vagueness of complainant's contention. Since her case is based upon the ground that due to the torture of the present petitioners she had to leave her matrimonial home, for a criminal trial to be proceeded against the petitioners, precession of such a fact is very much imperative and necessary.

23. The complaint under Section 156 (3) Cr.p.c as well as the materials in CD show that the allegations of the opposite party no.2 are non-specific and from neither the complaint nor the materials in CD, specific or direct allegations against any of the accused persons, individually, could be found.

This, excepting not justifying sending up the petitioners for trial, also show a desparate plunge of the opposite party no.2, to involve all the members of entire household, which tendency has been repeatedly deprecated by the Hon'ble Supreme Court, in various judgments.

24. No doubt it is a matter on record, that, by an ex-parte decree of divorce of the competent court, the marriage tie of the parties was severed with effect from 3rd February, 2016, after a prolonged period of living separate from each other. Needless to mention that the opposite party no.2 is far from being specific regarding the relevant dates, as discussed above.

25. Upon this factual background, the ratio of the judgment as relied on by the petitioners squarely applies to their case. No specific roll is attributed to any of the petitioners individually in commission of the offence, as alleged. Also that the relevant and pertinent dates are merely her surmise. On all the facts and circumstances as discussed above, it would only be unjust if the petitioners are forced to go through the rigours of trial in so far as the general, omnibus allegations against them could not manifest the situation where the petitioners may be forced to undergo a trial. If so done, that would amount to be an abuse of the process of the court. Hence it is appropriate that this court intervenes and quashes the proceedings.

26. One cannot however, leave aside the argument on behalf of the state/opposite party, that, not only the physical torture but mental torture is

also a component to construe an offence under Section 498A IPC, which the complainant has specifically pleaded. Even accepting the principle as argued, in this particular case, one cannot find such material in the CD not to speak of any definite or precise of those, to even presume any iota of such allegations to have been substantiated by any material in that.

27. Accordingly this court has no hesitation to hold that there is no material against the petitioners to direct the trial to be proceeded with against them and the present criminal revision case merits success.

28. C.R.R 1917 of 2016 is allowed. The case pending before the trial court being G.R Case No.1484 of 2015 in connection with Jalangi PS Case No.368 of 2015 dated 14.04.2015 under Section 498A IPC, is quashed and set aside.

29. C.R.R 1917 of 2016 along with all connected applications is disposed of. Copy of the order be sent to the learned trial court for information and necessary action.

30. Urgent certified website copy of this order, if applied for, be supplied to the parties upon usual undertaking.

(Rai Chattopadhyay, J.)