# IN THE HIGH COURT AT CALCUTTA

## Criminal Revisional Jurisdiction

**Present: - Hon'ble Mr. Justice Subhendu Samanta.**

**C.R.R. No. - 1957 of 2017**

**IN THE MATTER OF**

**Sri Santanu Ranjan Dutta**
**Vs.**
**Smt. Anindita Majumdar & Anr.**

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| **For the respondent** | **:** | **Mr. Indrajeet Dasgupta, Adv.,** |
| | | **Ms. Puspita Bhowmick, Adv.,** |
| | | **Ms. Rima Biswas Adv.** |
| **For the State** | **:** | **Mr. Binay Panda, Adv,** |
| | | **Mr. Subham Bhakat,Adv.** |
| **Judgment on** | **:** | **29.09.2022** |

**<u>Subhendu Samanta, J.</u>**

The instant criminal revisional application has been preferred U/s 401 read with Section 482 of the Code of Criminal Procedure 1973 for quashing a criminal proceedings in connection with the Survey Park Police Station Case No. 31 dated 17.02.2017 U/s 498A, 406 and 34 of Indian Penal Code.

In a nutshell the petitioner's case is that the marriage between the petitioner and opposite party No. 1 was solemnized on 25.04.2012 under Special Marriage Act.

There were disputes between the parties regarding their matrimonial life and OP 1 left her matrimonial home on 22.09.2012.

Settlement between the parties in presence of their relatives was arrived to minimise the dispute but all became futile. One Matrimonial Suit was filed before the District Judges Court, Alipore, 24 Paragans (south), being Matrimonial Suit No. 169 of 2013.

The OP 1 contested the same Matrimonial Suit and finally the suit was decreed on contest on 4th August 2015.

Since 29.09.2012 OP 1 was residing separately at her father's house.

OP 1 filed the instant criminal proceeding by virtue of a petition of complaint dated 07.01.2017. Police conducted investigation on the basis of the said complaint, collected some Stridhan articles from the house of the petitioner and submitted charge sheet against the petitioner.

Hence this revision.

Learned Advocate for the petitioner submitted before this court that the OP 1 left the house of the petitioner on 22.09.2012 and the instant complaint was filed on 07.01.2017 which is beyond the period of limitation and cannot be sustained in the eye of law.

Mother of the petitioner died much before the filing of the complaint but the OP 1, as she had no knowledge regarding her matrimonial home and its affairs, filed the false complaint against the dead person.

The marriage between the petitioner and OP 1 was declared by the court of competent jurisdiction to be nullity thus, filing of a complaint on the basis of the said marriage is baseless.

It is the case of the petitioner that the instant criminal proceeding is only false fictitious and harrasive. So it can not be allowed to be continued.

In support of his contention Learned Advocate for the petitioner cited a decision of Madras High Court in a case of **Arun Kumar vs. State**; wherein Hon'ble Madras High Court in a similar circumstances quashed the criminal proceeding initiated by the wife.

He also cited a decision reported in **(2017) 9 SCC 413.**

Learned Advocate appearing on behalf of the opposite party argued at length and also filed Memo of arguments. It is the argument of the Learned Advocate for the OP 1 that the OP was subjected to physical and mental cruelty at her matrimonial home and she had to leave her matrimonial home to save her life. The stridhan articles were kept by the petitioners which only received by her after filing of the instant proceeding. He also argued that some stridhan articles were also remained in a custody of the petitioners till today. The decree passed by the Civil Court was stayed by the Hon'ble high Court.

On the point of limitation, he argued that according to the provisions of 469 CrP.C.. The period of limitation is three years. According to the provision of 470 of Cr.P.C. there are exclusion of time in certain case. In the present case the limitation commenced only on December 2013, when the OP came to know about the filing of the Matrimonial Suit. The OP was engaged for seeking relief in the Civil Litigation so in this case, the time occupied for civil proceeding need be excluded.

He further argued that the offence punishable U/s 406 of IPC is a continuing offence and in case of continuing offence there shall be no limitation for filing cases according to the provisions of Section 472 of Cr.P.C.

He also argued that in this case the OP is entitled to have the extension of the period of limitation as per provisions of 473 Cr.PC. because in this type of cases filed U/s 498A/406 IPC the wife is entitled to have such extension.

He further argued that OP had been treated with cruelty at her matrimonial home for which the instant criminal proceeding has been initiated. The investigation of the police is ended in charge sheet. At this juncture, the prima facie offence against the petitioner has been proved; thus, the instant proceeding can not be quashed.

In support of his contention, the Learned Advocate for the OP 1 has cited some decisions reported in **(2016) 2 SCC 705,(2019) 4 SCC 690,1993 AIR SCW 3595,(1997) 2 SCC 397.**

Learned Advocate appearing on behalf of the state submitted that the charge sheet has been filed and instant criminal case is otherwise ready for trial. At this juncture, grievances of petitioners can be easily ventilated before the Learned Magistrate by taking part of the trial. At this juncture the criminal proceeding cannot be allowed to be quashed. The state also submitted Memo of Evidences prepared by the I.O. of this case.

Heard, the Learned Advocates at length. The fact of the case goes to show that the marriage between the parties were dissolved by a decree of nullity passed by the 1st Court of Additional District Judge, Alipore, South 24 Paraganas. Actually it is a decree of nullity according to the provisions of Section 25(1)(i) of the Special Marriage Act 1954. On perusal of the said judgment it appears to me that the ground was taken in the said matrimonial suit by the petitioner was that; the marriage was never consummated between the parties. The OP No. 1 contested the matrimonial suit by filing written statement but admitted the non consummation of marriage due to impotency of the petitioner. Whatever may be the ground taken by both the parties before the Learned Additional District Judge, the fact which is admitted by both the parties in their respective pleadings was, the marriage between the parties was never consummated and they live separately since 22.09.2012.

The FIR of the instant case was filed on 07.01.2017 admittedly after a period of limitation. The ground of delay for filing of the said complaint was stated at the last Para of the said written complaint; which mentioned that there are some attempt to settle the disputes between the parties and the OP had to go abroad for her work at the time to time.

It is the argument on behalf of the OP that the OP came to know about the fact of the civil dispute only in December 2013 and the limitation shall commence therefrom. If that be so, the period of limitation for filing the instant complaint is within December 2016. Admittedly the instant complaint was filed on 07.01.2017, beyond the period of limitation. The engagement of opposite party in the civil dispute i.e. in the matrimonial suit does not allow her for getting exclusion of time according to the provision of Section 470 of Cr.P.C. There were no bar to initiate a criminal proceeding by the OP during the continuation of the civil proceeding.

In the case of **Krishna Bhattacharjee vs. Sarathi Chowdhury, (2016) 2 SCC 705,** Hon'ble Supreme Court has held the concept of continuing offence in Para 32

> *32. Regard being had to the aforesaid statement of law, we have to see whether retention of* ***stridhan by the husband or any other family members is a continuing offence or not.*** *There can be no dispute that* ***wife can file a suit for realisation of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust.*** *We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of "aggrieved person" clearly postulates about the status of any woman who has been subjected to*

*domestic violence as defined under Section 3 of the said Act. "Economic abuse" as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which has been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in Inderjit Sing Grewal [Inderjit Sing Grewal vs.State of Punjab,(2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] that Section 468 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15 (6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as* ***we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act.*** *We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage.* ***The concept of "continuing offence" gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can***

> ***submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act.***

Learned Advocate for the opposite party argued that in view of the above citation of Hon'ble Supreme Court the offence punishable U/s 406 IPC is a continuing offence. In case of continuing offence there is always a fresh period of limitation.

On careful reading of the above citation it appears that Hon'ble Supreme Court in the cited case has discussed regarding the scope of Section 12 of Protection of Women from Domestic Violence Act 2005. Hon'ble Supreme Court in the said judgment has given an explanation regarding the scope of aggrieved women when her Stridhan articles remained in custody of the husband and such claim can always be available according to the provisions of Section 12 on PWDV Act 2005. It is no doubt that the criminal breach of trust defined U/s 405 of Indian Penal Code is always a continuing offence.

In **Arun Vyas vs. Anita Vyas (1999) 4 SCC 690** Hon'ble Supreme Court has held that in case of complaint U/s 498A the court should construe the delay liberally and according to the provisions of Section 473 Cr.P.C. the court has to take cognizance of offence even after the Period of Limitation for the interest of justice. Some view has been taken by the Hon'ble Supreme Court in **Vanka Radhamanohari vs. Vanka Venkata Reddy (1993) AIR SCW 3595.** Learned Advocate for the OP also cited a decision reported in the case of **Rashmi Kumar vs. Mahesh Kumar Bhada, (1997) 2 SCC 397.**

In the above citation of Hon'ble Apex Court has made a caution to the High Court for using or exercising its power U/s 482 of the Cr.P.C. only to prevent miscarriage of justice. The exercise of power by the High Court U/s 482 of the Cr.P.C. for quashing the complaint or charge sheet in a fit case would tantamount to abuse the process of the court.

In considering the view of the Hon'ble Apex Court in case of **Arun Vyas** and **Vanka Radhamanohari** regarding taking cognizance of an offence punishable U/s 498A of IPC after a Period of Limitation; the alleged offence stated in the instant FIR has to be looked into.

The instant FIR stated the term "cruelty" inflicted upon the OP 1 by the present petitioner and his mother. But the statement of FIR does not actually defined cruelty as it is defined U/s 498A of IPC.

Section 498A IPC is read as follows-

> " ***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.*
>
> *Explanation – For the purposes 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. "*

Merely stating the term physical and mental cruelty does not postulates the term cruelty as defined under the Said Section. The fact of the case suggests the FIR was lodged long after the admitted date of desertion i.e. 22.09.2012. The FIR also did not mention the fact of driven out of OP from her matrimonial home.

The instant FIR does not allege the fact of demand of dowry. The definition of cruelty as defined in the provisions of Section 498A IPC is missing in the FIR. At this stage, after careful scanning of the FIR; if the fact of the FIR is take to be true, then also the ingredients of offence punishable U/s 498A cannot be substantiated in this case.

The offence as alleged in the FIR U/s 406 IPC is also scanned. It has been alleged in the FIR that OP could not take her personal belongings, jewelleries, furniture at the time of living her matrimonial home and it has been further alleged that subsequently the present petitioner refused to return her stridhan properties. During the course of investigation of this case some articles were seized by the investigating agency and handed over to the OP. The criminal breach of trust has been defined U/s 405 of Indian Penal Code the punishment has been defined has been enumerated Under Section 406 Indian Penal Code.

Section 405 and 406

> ***"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".*
>
> *Explanation 1. – A person, being an employer of an establishment whether exempted under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952),or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be*

*deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.*

*Explanation 2.- A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees'' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and* if *he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.*

***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."*

To constitute an offence U/s 406 IPC it is to be proved that the accused has dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of the property. In the four corner of the instant FIR it has not been alleged by the OP that the stridhan articles were dishonestly misappropriates or disposes of by the petitioners. During the course of investigation, no evidence was collected or no statement of available witnesses were recorded to show that at any point of time the present petitioner had tried to misappropriates the stridhan of OP.

So after scanning the evidence and after entire consideration of the provisions of law. It appears to me that the petition of complaint that is the FIR as well as the investigation lacking any ingredients of offence punishable U/s 406 IPC against the present petitioners.

I have gone through the decisions cited by the Learned Advocate for the petitioner reported in **(2017) 9 SCC 413.** In the similar facts and circumstances of the Hon'ble Apex Court is of a view in Para 8 and 9.

> *8. we are conscious of the fact that, Section 498A was added to the Code with a view to punish the husband or any of his relatives, who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. Keeping the aforementioned object in mind, we*

*have dealt with the matter. We do not find any allegation of subjecting the complainant to cruelty within the meaning of Section 498-A IPC. The records at hand could not disclose any wilful conduct which is of such a nature as is likely to drive the complainant to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the complainant. So also, there is nothing on record to show that there was a demand of dowry by the appellants or any of their relatives, either prior to the marriage, during the marriage or after the marriage. The record also does not disclose anywhere that the husband of the complainant acted, with a view to coerce her or any person related to her to meet any unlawful demand of any property or valuable security.*

*9. The ingredients of criminal breach of trust are also not forthcoming from the records as against the appellants. The allegations contained in the complaint and the charge-sheet do not satisfy the definition of criminal breach of trust, as contained in Section 405 IPC. In view of the blurred allegations, and as we find that the complainant is only citing the incidents of unhappiness with her husband, no useful purpose will be served in continuing the prosecution against the appellants. This is a case where*

> *there is a total absence of allegations for the offences punishable under Section 498 A and Section 406 IPC. In the matter on hand, the allegations made in the first information report as well as the material collected during the investigation, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute the offences punishable under Sections 498 A and 406 IPC against the appellant-accused. So also uncontroverted allegations found against the appellants do not disclose the commission of the offence alleged and make out a case against the accused. The proceedings initiated against the appellants are liable to be quashed.*

In quashing a criminal proceeding initiated U/s 498A and 406 IPC by applying inherent power of this court U/s 482 Cr.P.C. it is necessary to look into the entire criminal proceeding which is based on the FIR and strengthed by the charge sheet.

It is the basic tests for allowing an application to quash a criminal proceeding that if, the factum of FIR as well as the evidence so collected by the investigating agency is taken to be true then also the offence against the accused petitioner can not be substantiated in the trial. In the present case the FIR has lodged much after three years and no such satisfactory explanation has advanced on behalf of the opposite party that why the delay is caused.  The opposite party was well aware about the allegation at the time of initiation of the civil proceeding but she kept herself mum.

It further appears that the opposite party has lodged the complaint after disposal the matrimonial suit. It is further observed that both parties admitted that their marriage was not consummated.

It is not permitted for any party to raise a criminal proceeding at his wish after long delay of alleged incident. In this case the delay has not been properly explained by the OP so, she is not entitled to get benefit according to the Provisions U/s 473 of IPC.

Thus, after considering the entire facts and circumstances of this case and after going the materials on record from the either side it appears to me that the criminal proceeding initiated by the OP is manifestly attended with mala fide intention with ulterior motive for wricking vengeance on the petitioner/accused to fulfil her personal grudge. So, it is a fit case where the inherent power of this court U/s 482 of Cr.P.C. can be exercised.

As a result thereof, the criminal proceeding initiated against the petitioner by the opposite party in connection with Survey Park Police Station, Police Case No. 31 dated 7$^{th}$ February 2017 U/s 498A /406 IPC is hereby quashed.

The petitioner is released from his bail bond so furnished by him in connection with this case.

Sureties are also released.

Let a copy of this order be sent down to the Learned Court below for his information and necessary action. Accordingly, the instant criminal revision along with connected CRAN application if any, are also disposed of.

Any order of stay passed by this court is also hereby vacated.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis. All parties shall act in terms of copy of this order downloaded from the official website of this Court.

**(Subhendu Samanta, J.)**