

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 3221 of 2018

F.A.M. Aminuzzaman Chowdhury @ Fama Chowdhury & Ors.

-vs-

The State of West Bengal & Anr.

For the Petitioners : Mr. Amitavha Karmakar
Mr. Arup Kumar Bhowmick

For the O.P. no. 2 : Mr. Apurba Kr. Datta
Md. Hadiur Rahaman

For the State : Mr. P.K. Dutta, Ld. APP
Mr. Nirupam Dhali

Heard on : 28.7.2022

Judgment on : 03.08.2022

Ajoy Kumar Mukherjee, J.

1. The present revisional application under Section 482 of the Code of Criminal Procedure has been preferred for quashing of a proceeding being G.R. case no. 4135 of 2018 pending before the learned Additional Chief Judicial Magistrate, Barrackpore arising out of Jagaddal Police Station case no. 310 of 2018 dated 16.3.2018 under Section 498A of the Indian Penal Code.

2. It is alleged in the first information report that marriage between the opposite party no. 2 herein along with the petitioner no. 1 herein was solemnized according to the Muslim Rites and Customs. At the time of marriage, gold ornaments and other articles were given. It is further alleged that few days after marriage, the petitioner demanded cash from the father of the complainant and since the father of the complainant could not arrange additional amount, the complainant was subjected to ill treatment and torture both mentally and physically. Father of the complainant requested the petitioner no. 1 not to inflict torture any further but the petitioner no. 1 did not pay any heed to such request. On 29.1.2016 the petitioners physically assaulted the complainant and had driven her from her matrimonial home. Subsequently on 24.01.2018 the petitioner no. 1 came to paternal house of the complainant and made an attempt to kill her.

3. Learned advocate for the petitioner Mr. Karmakar submits that in the year 2016, the husband of the complainant/petitioner no. 1 went to the house of the defacto complainant to bring her back in the matrimonial home but the defacto complainant and her family members misbehaved with petitioner no. 1 and tried to assault him. He further submits that on 18.7.2016, the opposite party No. 2 gave 'khula' (divorce) in presence of her parents and relatives and local people to the petitioner no. 1 and on the same day, the petitioner returned all her stridhan articles. In fact, the instant proceeding has been initiated by the complainant/opposite party no. 2 after dissolution of the marriage. He further submits that in the first information report, the

complainant stated that beside husband her in-laws also demanded additional amount from the father of the complainant but the materials in the case diary does not support such allegation against in-laws of the complaint. In fact, the defacto complainant/opposite party no. 2 had voluntarily left her matrimonial house but police without making proper investigation, has submitted charge-sheet under Section 498A of the Indian Penal Code. He further submits that petitioner no. 1 tried his level best to resume the conjugal life but the complainant gave 'khula' (divorce) to the petitioner and the lodgement of first information report is clearly an afterthought and has been filed with a motive to harass the petitioners.

4. Learned advocate for the opposite party no. 2 Mr. Dutta submits that materials collected during investigation and the contents of complain itself, clearly and specifically discloses offence against the petitioners. At the time of marriage, accused no. 1 expressed that he is a divorcee but ultimately, it appears that accused no. 1 has another wife and child prior to this marriage and a criminal case under Section 498A/292/373 of the Indian Penal Code is pending before the learned District Judge, Baharampur vide FIR no. 577 of 2011, (dated 11.11.2011) being G.R. no. 2365 of 2011. He also submits that petitioner no. 1 tried to kill the opposite party no. 2 by pouring kerosine oil but somehow the complainant managed to save herself. Petitioner no. 1 made attempt to murder the opposite party nos. 2 on five to seven times and also forcibly aborted her pregnancy on 3.8.2015 and 20.4.2017. Furthermore, the petitioner no. 1 taken naked photo and video of opposite party no. 2, taking

advantage of her absence of mind and now threatening to share the same in social media. On 24.2.2018 the accused no. 1 brutally assaulted the opposite party no. 2 and threw acid towards the complainant and as such police has rightly submitted charge-sheet against the accused persons.

5. Learned advocate for the State Mr. P.K. Dutta submits that sufficient incriminating materials have been collected during investigation against the petitioners and first information report itself discloses offence under various provisions of the Indian Penal Code against the petitioners. Moreover, the investigation has already been ended in charge-sheet and the case is pending for trial and as such at this stage, it would not be proper to quash the proceeding invoking power under Section 482 of the Code of Criminal Procedure.

6. Considered the rival submissions.

7. It appears from the complain as well as from the materials in the case diary including the statements recorded under Section 161 of the Code of Criminal Procedure and the copy of the medical papers that it *prima facie* discloses offence against the petitioner no. 1/husband.

8. Following the ratio as laid down in the ***State of Haryana Vs. Bhajan Lal***, reported in **1992 Supp (1) SCC 335**, it can be said that it is not a proper case to quash the proceeding so far as petitioner no. 1 is concerned. However, on a perusal of the case diary as well as the complain, it appears that the allegations levelled against the other petitioners, namely petitioner nos. 2 to 7 who are in-laws are evasive and no specific overt act has been attributed

against the said petitioner nos. 2 to 7. Relatives of the husband has been implicated without analysing long term ramification of the trial on the complain.

9. The Apex court time and again as deprecated such baseless implication by way of general allegation made in the course of matrimonial dispute against the relatives of husband, in catena of judgments.

10. In ***Kahkashan Kausar @ Sonam and ors. Vs. State of Bihar and ors.***, reported in **(2022) 6 SCC 599** it was observed by the Apex Court in Para 18:-

“18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, 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.”

11. On perusal of the materials as available in the case diary and also from the averments made in the complaint , it is clear that though specific case has been disclosed against the petitioner no. 1 but veiled object behind implicating petitioner nos. 2 to 7 is apparently to harass the said petitioners. On perusal of the contents of the first information report it is apparent that no specific overt act has been alleged against any of the petitioner nos. 2 to 7. Mere casual

reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter, would not justify to place them for trial, overlooking the fact that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute. It has been specifically held in ***Neelu Chopra and anr.***

Vs. Bharti reported in **(2009) 10 SCC 184**, in Para 9 and 10 reads 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 the above backdrop and in ultimate analysis, I am of the view that prayer for quashing present proceeding against the petitioner no. 1 is liable to be rejected but the prayer for quashing of the present proceeding against the petitioner nos. 2 to 7 is required to be allowed for the ends of justice because even if the proceeding against the petitioner nos. 2 to 7 is allowed to be continued that will be an abuse of process of court because there is hardly any chance of their conviction on the basis of materials so far collected during investigation.

13. In view of above CRR 3221 of 2018 is allowed in part.

14. Let the prayer for quashing the entire proceeding being G.R. case no. 4135 of 2018 pending before the learned Additional Chief Judicial Magistrate, Barrackpore arising out of Jagaddal Police Station case no. 310 of 2018 dated 16.3.2018 under Section 498A of the Indian Penal Code against the petitioner no. 1 is dismissed.

15. However, the proceeding being G.R. case no. 4135 of 2018 pending before the learned Additional Chief Judicial Magistrate, Barrackpore arising out of Jagaddal Police Station case no. 310 of 2018 dated 16.3.2018 under Section 498A of the Indian Penal Code against the petitioner nos. 2 to 7 is hereby quashed in view of the aforesaid facts and circumstances of the case.

16. However there will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)