

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

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

CRR 3353 of 2019

Smt. Kalawati Devi & ors.
Vs.
The State of West Bengal & anr.

For the petitioner: Mr. Prosenjit Debnath

For the State: Mr Imrarn Ali
Ms. Debjani Sahu

Heard on: 6th June, 2022

Judgment on: 10th June, 2022

Ajoy Kumar Mukherjee, J.

1. The present revisional application has been preferred with a prayer for quashing of the first information report (FIR) being Uttarpa Police Station case no. 472 of 2019 dated 10.9.2019 under Section 498A/323/325/506/34 of the Indian Penal Code being G.R. case no. 1746 of 2019.

2. The case set out by the defacto complainant in the F.I.R. is that on 10th September, 2019 at about 8 A.M. in the morning, the petitioner started inflicting torture upon opposite party no. 2 and after receiving injury, she felt down on the ground.

It is also alleged that at that time, the petitioner hold hair of the opposite party no. 2 and inflicted bodily injury by fist and blows and that petitioner no. 1 took a brick in order to assault her but at that time, the mother and sister of the defacto-complainant came to the spot along with local inhabitants and rescued the opposite party no. 2. It is further stated that marriage was solemnised between opposite party no. 2 and son of the petitioner no. 1 on 28th January, 2005 and due to said wedlock, two sons were born. Unfortunately the husband of opposite party no. 2 who is the son of the petitioner no. 1, died in a road accident on 26.1.2016. It has been further alleged in F.I.R. that after the demise of her husband, her mother-in-law and her sister started inflicting torture upon her and for which she filed first information report as above.

The petitioner no. 1 is the mother in law of opposite party no. 1 and she is a permanent resident of the State of Bihar and is an employee of South Bihar Power Distribution Company Ltd. and petitioner no. 2 is the sister of petitioner no. 1 and petitioner no. 2 is the citizen of Nepal and has been residing there with her family members for a long time. The petitioner no. 3 is the daughter of petitioner no. 2.

3. However, the case of the petitioner is that the petitioner no. 1 is solely dependent on her husband who is a permanent resident of Bihar and after demise of her son, she seldom came to West Bengal. On 10.9.2019, the petitioner no. 1 came to West Bengal to visit her grand children and daughter in law but when she about to enter into the house, the opposite party no. 2 got furious and hot altercation took place between petitioner no. 1 and opposite

party no. 2 and she was beaten ruthlessly by the parents and brother of the opposite party no. 2, who are residing in the said house. The petitioner's contention is that she never shared the same household with petitioner no. 1 as opposite party no 2 has been residing at West Bengal since inception of her marriage. It is evident from the first information report that the opposite party herself admitted that there was no torture or cruelty so long her husband was alive. The opposite party no. 2 never resided with the petitioner no. 1 after her marriage. Even if the entire prosecution story as stated in the first information report is taken as true from its face value, even then it does not constitute any offence under Section 498A. The complaint does not state specifically as to which accused has committed which offence and what is the exact role played by this petitioner in regard to the commission of offence.

4. Under such circumstances, it would be an abuse of the process of law to allow the prosecution to continue against the petitioners on the basis of a vague and general complaint which is silent about the specific act of the petitioners.

5. Being aggrieved and dissatisfied with the initiation of the said case being G.R. case no. 1746 of 2019, the petitioners prayed for quashing the aforesaid impugned proceeding.

6. The state is being represented and Mr. Imran Ali on behalf of state submits that sufficient other incriminating materials are there in the case diary for continuation with the proceedings, apart from allegation Under Section 498-A of Indian Penal Code.

7. It is reported by Sub-Inspector of Police, Uttarpara Police Station in compliance with this court's order dated 19.1.2022

"During investigation I visited the P.O. drew a rough sketch map with an index and examined available witnesses as well as the complainant and recorded their statement u/s 161 Cr. P.C. in separate sheets of paper. In course of investigation I issued notice u/s 91 Cr. P.C. upon the complainant and in response of said notice she produced some marriage proof documents, accordingly I seized the same under proper seizer list duly signed by the witnesses as well as complainant , which are kept with original case diary. I also send notice u/s 41A Cr.P.C. to the FIR named accused persons, but they did not turned up. During investigation I submitted a prayer before the superintendent of Kanaipur BPHC, Kanaipur, Hooghly for injury report of complainant as well as Mamata Mondal and collected injury report of victim Mamata Mondal, also collected the OPD medical ticket of victim Mamata Mondal and perused the injury report where Dr. Sayandip Addya, (Reg. No. 64267, WBMC) of Kanaipur BPHC, Kanaipur Hooghly opine that nurture of injury mostly simple wound injury."

8. In view of the aforesaid report that the victim Mamata Mondal has sustained simple wound injury in connection with the alleged occurrence there is hardly any scope to say that apart from Section 498-A, other sections do not attract in the present context against the accused persons.

9. While exercising jurisdiction under section 482 of the code, it is not to be looked into whether there is reliable evidence or not but to consider whether allegations in the FIR do not at all disclose any offence. If from the materials on record from which the court can reasonably arrive at a finding that the proceeding is in abuse of process of the court, then jurisdiction Under Section 482 can be exercised with caution. In this case it appears that complainant not only alleged cruelty to attract Section 498-A I.P.C. but also made allegation of causing hurt and for which investigating agency has collected medical

documents. Accordingly there is hardly any scope to say that the materials available so far does not disclose any offence or there is no necessity to proceed with trial. Case law cited by petitioner reported in **(2009) 10 SCC 184** is not applicable here as role played by accd in connection with assault is reflected in F.I.R. Similarly case law reported in **(2010) 7 SCC 667** is not applicable because in that case prosecution witnesses were recorded and no witness stated anything about the case.

10. Having regard to the facts and circumstances of the case and the allegations as recorded against the accused persons and also in view of the materials available so far including injury report, I do not find any reason to quash the aforesaid proceedings only on the ground that prior to the date of incident the petitioners never resided with opposite party no. 2 in the shared household or on the ground that out of several grounds made out in the First Information Report, one particular offence could not be constituted from the face value of it's content.

Accordingly, CRR 3353 of 2019 is dismissed.

However there will be no order as to costs.

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

(AJAY KUMAR MUKHERJEE, J.)

