

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

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 3863 of 2019

With

CRAN 1 of 2021

Sri Sudhir Chandra Mondal & anr.

-vs-

The State of West Bengal & anr.

For the Petitioners :Mr. Debasis Kar
Mr. Husen Mustafi
Mr. Subhajit Chowdhury
Mr. Arka Tilak Bhadra

For the Opposite Party No. 2 :Mr. Kallol Mondal
Mr. Krishan Roy
Mr. Souvik Das
Mr. Anamitra Banerjee
Mr. Samsheer Ansari

For the State : Mr. Saswata Gopal Mukherjee
Ms. Faria Hossain
Ms. Baisali Basu

Heard On : 29.06.2022.

Judgment On : 08.07.2022.

Ajoy Kumar Mukherjee, J.

1. Present revisional application has been directed for quashing of proceeding in respect of charge sheet No. 30 dated 31.03.2016 under section

498A of the Indian Penal Code corresponding to G.R. No. 99/2016, arising out of Jamboni Police Station Case No. 16/16 dated 11.02.2016 under Section 498A of the Indian Penal Code (IPC) now pending before the learned Additional Chief Judicial Magistrate, 1st Court, Jhargram.

2. Petitioners have contended in the revisional application that opposite party no.2 lodged a written complain on 11.02.2016 to the effect that she was married to Suman Mondal on 18.02.2011 and present petitioner being the parents in-law used to instigate their son to break up the matrimonial relationship and on 10.02.2016 when the opposite party No. 2 along with her husband came to her in-laws house, the petitioners inflicted mental torture upon her.

3. Mr. Debasish Kar learned counsel for the petitioners submits that petitioners are no way connected with the alleged offence and on the date of alleged incident petitioner No. 1 was hospitalized. Moreover ingredients of section 498A of IPC are completely absent in the present case and statements made under section 161 of the Code of Criminal Procedure (Code) by the witnesses do not support prosecution case. He further submits that if the entire allegations in complain is taken to be true then also it does not disclose any offence against the present petitioners.

4. Mr. Kallol Mondal learned advocate appearing for the state submits that evidence is going on before the trial court and whether the materials collected during investigation constitutes any offence or not will be decided at the trial

and as trial is continuing it would not be proper to quash the proceeding invoking section 482 of the code.

5. The case as set out in complain may be summarized as follows:

(a) After marriage father-in-law i.e. petitioner no. 1 regularly insisted husband of defacto complainant not to maintain any sort of conjugal relationship with opposite party no.2.

(b) Whenever opposite party no. 2 came to her in-laws house with her husband, her father-in-law i.e. petitioner no. 1 assaulted her mentally again and again.

(c) When her husband came to his home without opposite party no. 2, he was repeatedly provoked against opposite party no. 2 and compelled him not to contact with opposite party no.2. When opposite party No.2 called her in-laws over telephone with request to allow her to talk with her husband, then her in-laws used to give her slang and humiliate her.

(d) Being the only daughter of her parents there was a mutual understanding prior to her marriage with opposite party no. 2 that she will stay at Madhyamgram to look after her father who is a cancer patient and her mother who is patient of asthma and arthritis. Inspite of such understanding the petitioners forcibly insisted her to stay at Kapgari Jambani, though she was not at all agreeable to this and as a result her husband was strongly pressurized to give her divorce.

(e) Recently when opposite party No. 2 came to see her father-in-law i.e. petitioner no. 1 on 10.02.2019, at that time her father-in-law went after her and attempted to assault her physically with ferocious attitude and her husband rescued her from the place, otherwise her life would have been at a stake.

(f) On 10.02.2016 petitioner No. 2 (mother-in-law) threatened her husband over telephone not to come to their house in future as said house is her husband's house.

(g) Life of opposite party no.2 and her husband is full of risk and insecured and as such opposite party no. 2 was compelled to lodge F.I.R. against her in-laws.

6. During investigation police had recorded statements of the witnesses under section 161 Cr.P.C. out of which one Swapan Karan stated that the petitioners inflicted mental torture upon Opposite Party No. 2 for a long time as the opposite party No. 2, few days after marriage returned to her parents house and as opposite Party No. 2 did not want to conceive. Whenever opposite Party no. 2 used to come to her matrimonial house the petitioner abused her with filthy language and used to inflict mental torture upon her and on 10.02.2016 trouble arose between the parties to a great extent for which opposite party No. 2 compelled to leave her matrimonial house. The other witness Debasish Mondal stated during investigation that few days after marriage opposite party No. 2 returned to her parents house and for which the

petitioners were very much dissatisfied with opposite party no. 2 and they used to instigate husband of opposite party No. 2 for dissolution of her marriage. The petitioners were also dissatisfied as opposite party 2 did not agree to conceive. On 10.02.2016 when opposite party No. 2 came to the house of the petitioners, the petitioners abused her with filthy language and inflicted mental cruelty upon them. Another witness Shital Mondal's statement recorded under section 161 of the code reveals, as there was no matrimonial relationship for long time between opposite party no. 2 and her husband, so the petitioner used to instigate their son for dissolution of marriage and whenever she used to come to her matrimonial house the petitioners used to inflict mental torture upon her and on 10.02.2016 when opposite party no. 2 came to the house of the petitioner, quarrel took place and for which opposite party no. 2 left her matrimonial house. Suman Mondal , the husband of the opposite Party No. 2 was also examined under section 161 Cr.P.C. and he stated that his marriage with the opposite party No. 2 took place against the will of the petitioners and for which the petitioners did not accept opposite party No. 2 as their daughter in-law. Opposite party no. 2 under compelling circumstances stays at her parents' house at Madhyamgram and for which his parents i.e. petitioners always instigate him for giving divorce to his wife and over this petitioners have made bad remarks on various occasions. On 10.02.2016 he and his wife i.e. opposite party No. 2 had gone to the house of the petitioners, then both the petitioners became furious and abused with

filthy language and for which opposite party No. 2 suffered mental cruelty and compelled to leave her matrimonial house.

7. Besides this aforesaid four statements I find no other material against petitioners in the case diary.

8. After completion of investigation police submitted charge-sheet stating *“During investigation a prima facie charge against both accused persons 1) Sudhir Chandra Mondal S/O Lt. Gopinath Mondal of Vill+PO kapgari , PS Jamboni Dist. Paschim Medinipur and 2) Madhuri Mondal W/O Sudhir Chandra Mondal of –do-is will establish U/S 498A IPC.*

Accordingly with the due consult with the I/C Jamboni PS and as per his order I am submitting Charge Sheet vide vide Jamboni PS Charge Sheet no. 30/16 Dt. 31/03/2016 U/S 498 A IPC against the FIR named accused persons

1) Sudhir Chandra Mondal S/O Lt. Gopinath Mondal of Vill+PS. Kapgari, PS Jamboni Dit. Paschim Medinipur and 2) Maduri Mondal W/O Sudhir Chandra Mondal of –do-

The witnesses noted in Col no. 14 will prove the Charge.”

9. Be it also mentioned that besides opposite party no. 2 who lodged the complain and the aforesaid four persons which includes her husband who had made statement under section 161 Cr.P.C. as above during investigation, the recording officer of the F.I.R. and the investigating officer are being made witnesses in the case as reflected in the charge sheet.

10. Now from the facts and circumstances of the case it is quite clear that in the F.I.R. and also in the statements recorded under section 161 Cr.P.C., no specific allegation has been attributed against the present petitioners which can disclose any offence at all besides casual reference of inflicting mental torture and casual reference of some irrelevant matrimonial discord with the family members, with whom she did not admittedly reside. Without evaluating specific role played by petitioners for constituting alleged offence, the Magistrate was not justified in taking cognizance over an issue which might have occurred due to family dispute. Opposite party no. 2 has roped two aged persons with allegations where ingredients of offence alleged is absent. Practically there is no mention either in the complaint or in the statements as to how the mental cruelty was inflicted and what specific role has been played by each of the petitioner in committing alleged offence.

11. In ***Kahkashan Kausar @ Sonam and others vs. State of Bihar & others*** reported in **2022 SCC OnLine SC 162** Apex Court noted the following observation:

“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”.

“19. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, 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”.

12. In *Preeti Gupta and another Vs. State of Jharkhand and another*

reported in **(2010) 7SCC 667** the Hon’ble Supreme Court observed as follows :

“32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern”.

“33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

“34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations”.

“35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinised with great care and circumspection”.

“36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful.”

13. In **Neelu Chopra and another Vs. Bharti** reported in **(2009) 10 SCC**

184 Hon’ble Apex Court came to the finding 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.”

14. In ***Geeta Mehrotra and another Vs. State of Uttar Pradesh and another*** reported in **(2012) 10 SCC 741** Hon’ble Apex Court was pleased to observe:-

“18. Their Lordships of the Supreme Court in Ramesh case [(2005) 3 SCC 507 : 2005 SCC (Cri) 735] had been pleased to hold that the bald allegations made against the sister-in-law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible. It was held that neither the FIR nor the charge-sheet furnished the legal basis for the Magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge-sheet, none of the alleged offences under Sections 498-A, 406 IPC and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister-in-law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.”

15. In the line of aforesaid series of precedents and having regard to the facts and circumstances of the case, I am of the view that the allegations are not only vague and omnibus in nature but also bereaved of details. The materials available in the record are not at all sufficient to form an opinion that there is ground for presuming that the petitioners have committed offence under the charge-sheeted sections. There is reason to believe that the veiled object behind the lame prosecution is apparently to harass the petitioners.

16. Accordingly I am of the view that the impugned prosecution is wholly unfounded and therefore to secure the ends of justice and for preventing the

abuse of the process of the criminal court, the impugned proceeding being G.R. No. 99/ 2016, arising out of Jamboni Police station Case No. 16/16 dated 11.02.2016 under Section 498A of the Indian Penal Code now pending before the learned Additional Chief Judicial Magistrate, 1st court, Jhargram is hereby quashed.

CRR 3863 of 2019 with CRAN 1 of 2021 is thus allowed.

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

(AJAY KUMAR MUKHERJEE, J.)