

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 144 of 2019

With

CRR 113 of 2019

Sri Uttam Kumar Bose

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Bibaswan Bhattacharrya.

For the State : Mr. Sudip Ghosh,
Mr. Bitasok Banerjee.

For the Opposite Party no. 2 : None.

Heard on : 14.12.2022

Judgment on : 17.01.2023

Shampa Dutt (Paul), J.:

The present revision has been preferred for quashing of the Charge Sheet and proceedings in G.R. No. 1934 of 2017, pending before the Learned Judicial Magistrate, 5th Court at Sealdah under Section 498A/406/323/34 of the Indian Penal Code, 1860, arising out of Beliaghata Police Station Case No. 197 of 2017, dated July 12, 2017 under Sections 498A/406/323/34 of the Indian Penal Code, 1860 read with Sections 3/4 of the Dowry Prohibition Act, 1961 and all orders passed therein.

The Petitioner's case is that he is the lawfully wedded husband of the Opposite Party No. 2 herein, their marriage having been duly solemnized on March 09, 2008, as per Hindu rites and customs.

Unfortunately, their married life was not peaceful due to the extremely hostile, adamant and inimical attitude of the Opposite Party No. 2 herein towards the present Petitioner and his family-members.

The Opposite Party No. 2 herein developed diverse kinds of medical conditions and disorders, which ushered in **primary infertility with premature menopause, thereby rendering her unable to conceive** and for this also she stated blaming the present Petitioner and even resumed self-medication at the advice of her own family-members, which further deteriorated her condition, for which she had

to be hospitalized and treated at the Department of Neurology, National Institute of Mental Health and Neuro-Sciences, Bangalore.

Being unable to further endure the persistent mental torment and agony that was being perpetrated upon him at the behest of the Opposite Party No. 2 herein and finding no other alternative, the present Petitioner on June 19, 2017, through his Learned Advocate had duly served a Legal Notice upon the Opposite Party No. 2 herein requesting her to make all necessary arrangements so that appropriate **proceedings for mutual divorce** may be instituted between the parties.

In retaliation to the aforesaid Legal Notice, as served on his behalf upon the Opposite Party No. 2 herein, on July 12, 2017 the Opposite Party No. 2 herein lodged a Written Complaint with the Officer-in-Charge of Beliaghata Police Station, falsely implicating the present Petitioner and all his family-members, which has led to the institution of the impugned criminal proceedings herein, being G.R. No. 1934 of 2017, arising out of Beliaghata Police Station Case No. 197 of 2017, dated July 12, 2017 under Sections 498A/406/323/34 of the Indian Penal Code, 1860 read with Sections 3/4 of the Dowry Prohibition Act, 1961.

In the instant Criminal Proceedings, the investigation has been concluded and Charge Sheet, being Beliaghata Police Station Charge Sheet No. 274/2017, dated December 06, 2017, has been submitted

under Sections 498A/406/323/34 of the Indian Penal Code, 1860 by the Investigating Agency and cognizance taken.

Mr. Bibaswan Bhattacharrya, Learned Counsel for the petitioner has submitted that the learned trial Court erred in law and acted with material irregularity and indiscretion in allowing the impugned proceedings. That the very origin of the impugned proceedings herein is doubtful and suspicious in itself, inasmuch as the same was initiated almost a month (on 12.07.2017) after the Legal Notice dated June 19, 2017 was served on behalf of the present Petitioner upon the Opposite Party no. 2 herein for the initiation of appropriate proceedings for mutual divorce and that the instant impugned criminal proceedings has been deliberately and consciously initiated thereafter in a mala fide manner solely to neutralize and counteract the assertions made against her in the divorce petition and to harass and trouble the present Petitioner and his family-members as a retribution and reprisal.

The impugned proceedings herein is otherwise bad in law and based on perverse and unreasonable findings, and thus liable to be set aside and /or quashed.

The impugned proceedings, if allowed to continue, would amount to gross and flagrant miscarriage of justice and prejudice to the present Petitioner.

Inspite of service the Opposite Party No. 2 /wife failed to contest this revision.

From the materials on record, it is seen that the marriage between the parties took place on 09.03.2008. The legal notice for mutual divorce was sent on 19.06.17 (after almost 10 years) of marriage.

The Criminal Case was initiated on 12.07.2017 where in it was alleged that she had been subjected to torture since 09.03.2008 (that is since the date of marriage).

Medical Papers show treatment for chronic Imida zoline toxicity (self medication indeed) with Axonal Sensormotor Neuropathy in the year 2016.

The suggestion of the doctor at Bengaluru was to follow up with a Neurologist and psychiatrist.

She has back ground history of primary infertility and premature menopause and chronic bowel symptoms.

There was history of mental distress due to family issues and demise of mother.

This condition as per the petitioner's version is Since, 2009. In the written complaint it is alleged that she was driven out of her matrimonial home in August, 2014, the complaint was admittedly filed

on 12.07.2017 after the petition for mutual divorce was sent on 19.06.2017.

This Court is of the view that the said act of the petitioner in such circumstances is also an act of cruelty. Thus the offence of cruelty in this case is a continuing offence.

In Vanka Radhamanohari v Vanka Venkata Reddy (1993) 3 SCC 4: 1993 SCC (Cr) 571, the Supreme Court in such cases has held:-

“Courts, while considering the question of limitation for an offence under Sec. 498A, IPC, should judge that question in the light of Sec. 473, CrPC, ignoring the bar of Sec. 468, CrPC. In view of Sec. 473, CrPC a court can take cognizance of an offence not only when it is satisfied that the delay has been properly explained, but that it is necessary to condone the delay in the interest of justice. By virtue of the non obstante clause in Sec. 473, CrPC, that Section has an overriding effect on Sec. 468.”

Case diary has been produced by **Mr. Sudip Ghosh, Learned Counsel for the State** who submits that there is sufficient evidence in the case diary making out a prima facie case of cognizable offence in the charge sheet against the petitioner and as such the revision for quashing of the Criminal Proceeding is liable to be dismissed.

Heard the Learned Counsel present. Perused the materials on record and in the case diary. Considered.

The facts in the present case are like this :-

- (i) The marriage was Solemnized on 09.03.2008 .
- (ii) The wife (Opp. Party no. 2) is a teacher by profession and the husband (petitioner) is a service man (on affidavit)
- (iii) Wife was treated at Bengaluru, Department of Neurology, National Institute of Mental Health and Neuro Science from 13.02.2016 to 22.02.2016 **where her condition improved with vitamin supplement.**
- (iv) She developed primary infertility with premature menopause and resorted to self medication.
- (v) She had history of mental distress due to family issues and demise of her mother, which led to decreased appetite with weight loss of 30 kg over last 2 years (as observed by Doctor in 2016).
- (vi) The petitioner/husband issued a notice requesting for mutual divorce on 19.06.2017.
- (vii) Finally the wife/opposite party no. 2 filed the Complaint in this case on 12.07.2017.

From the Case as discussed, it appears that the wife developed primary infertility with premature menopause, which is a great mental shock for a woman who is yet to become a mother. The self medication is a sign of helplessness. In addition further

stress was added with the wife/opposite party losing her mother (who in such circumstances) is a pillar of strength for a daughter).

All these added to the opposite party's trauma which from the medical papers can be seen and has been proved in view of the fact that with only vitamin supplements she improved enough to be discharged.

The loss of weight (30 kgs over 2 years) is also the result of such trauma's.

During such times it is the duty of a spouse to be the strength which the other has lost.

The reason of infertility is not a ground for divorce. There are several options to become parents. A spouse has to be understanding in these Circumstances as it is the other (only) who can help one to regain her/his mental, physical and emotional strength. To be able to face the world, the society in general, bravely together.

It could well have been the reverse. If the petitioner/husband had the problem, would he not expect support from his wife to make a better life together.

It was extremely insensitive of the petitioner in this case to ask the opposite party in such traumatic situation for a divorce by

mutual consent, which amounts to mental cruelty which effected her life and health.

To be fair to the petitioner/husband, maybe it is not everyone's cup to tea to be strong in such a situation.

To be strong in such circumstances requires a very caring heart and also a very good support system, which always is not there.

Sometimes, it so happens that only one can help oneself in such situations. A strong and confident person is obviously in a zone which helps a person to cure faster than another person who may not be so lucky.

In the present case the definition of the word 'cruelty' takes a different meaning altogether.

Section 498A of the Indian Penal Code.

"498A. 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 purpose 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.

Ingredients of offence. — *The essential ingredients of the offence under Sec. 498A are as follows:-*

- (1) A woman was married;*
- (2) She was subjected to cruelty;*
- (3) Such cruelty consisted in—*
 - (i) any wilful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical;*
 - (ii) harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the lawful demand;*
 - (iii) the woman was subjected to such cruelty by her husband or any relation of her husband.”*

In the present case the “mental cruelty” inflicted upon the opposite party no. 2 as discussed is of such a nature that it has caused grave danger to her life and health.

In *Rupali Devi vs State of U.P. (2019) 2 SCC (Cri) 558: (2019) 5 SCC 384 (3-Judge Bench)*, the Supreme Court has held:-

Para 14. *“.....The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being ill-treated are aspects that cannot be ignored while understanding the meaning of the expression “cruelty” appearing in Section 498A of the Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to*

traumatise the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress caused by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.....”

The materials in the case diary and the circumstances as discussed clearly make out a prima facie case of cognizable offence against the petitioner and this is a case where the inherent powers of this court **should not be exercised so as to prevent the abuse of process of the Court and in the interest of Justice.**

In Ranveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr., Special Leave petition (CRL.) No. 2953 of 2022, the Supreme Court on 20.04.2022 held :-

*“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under **Section 482** of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under **Section 482** of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The*

*allegations in the complaint constitute offence under the Attrocities Act. **Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.***

The following guideline of the Supreme Court in **M/s Neeharika Infrastructure vs. The State of Maharashtra** becomes applicable in this case.

The Supreme Court in **M/s Neeharika Infrastructure Vs. The State of Maharashtra (on 13 April, 2021), in Criminal Appeal No. 330 of 2021**, citing several precedents held :-

“ * * * * *

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

vi) Criminal proceedings ought not to be scuttled at the initial stage;

ix) The functions of the judiciary and the police are complementary, not overlapping;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of

quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

* * * * *

The materials in the case diary and the charge sheet here in makes out a clear prima facie case of a cognizable offence against the accused/petitioner and there is sufficient materials for proceeding against the accused/petitioner towards trial and the inherent power of the court should not be exercised to stifle a legitimate prosecution (in the words of the Supreme Court).

The Charge Sheet and the evidence placed in support thereof, form the base to take or refuse to take cognizance by the competent court.

Applications against charge sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial, **amounts to pre trial of Criminal trial. (State of Bihar Vs P.P. Sharma, AIR 1991 SC 1260).**

In the Present case there is substance in the allegations and material exists to prima facie make out the complicity of the applicant in a cognizable offence and as such the proceedings in this case should

not be quashed and this is a fit case where the inherent powers of the Court should not be exercised.

CRR 144 of 2019 along with CRR 113 of 2019 stands dismissed.

No order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)