

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 327 of 2019

Sikha Saha Gupta

Vs

The State of West Bengal & Ors.

For the Petitioner : Mr. Devajyoti Barman,
Ms. Sanjukta Basu Mallick.

For the State : None.

For the Opposite Parties No. 2 to 7 : None.

Heard on : 24.04.2023

Judgment on : 16.05.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for transfer of G.R. Case No. 1084 of 2018 arising out of Jaigoan Police Station Case No. 129 of 2018 under Section 498A of Indian Penal Code r/w Section 4 of Dowry Prohibition Act from the file of the Learned Additional Chief Judicial Magistrate, Alipurduar, to any other competent Magisterial Court within the jurisdiction of the Learned Chief Judicial Magistrate, Malda.
2. The petitioner's case is that the petitioner is the wife of the opposite party No. 2 herein and daughter in law of the opposite party Nos. 3 and 4 and sister in law of the opposite party nos. 5, 6 and 7.
3. That it is an admitted fact that the opposite parties are residents of Uttar Dewketa Toll, P.O. & P.S. Jaigoan, District-Alipurduar, PIN – 735182.
4. On the basis of a written complaint filed by the petitioner, Jaigoan Police Station Case No. 129 of 2018 under Section 498A of Indian Penal Code read with Section 4 of Dowry Prohibition Act was started against the opposite parties.
5. That initially a complaint was lodged at the English Bazar Women's Police Station on 22.06.2018 being English Bazar Women's Police Station Case No. 00 of 2018 and after receiving the same the L.A.S.I. made a prayer for transfer of the case to Jaigoan Police Station, which is the local police station of the opposite party nos. 2, 3, 4, 5, 6 and 7, and the prayer was allowed by the Ld. Court. Thus, the instant matter was

transferred to Jaigoan Police Station and registered there as FIR No. 129 of 2018 under Section 498A of Indian Penal Code read with Section 4 of Dowry Prohibition Act in which Charge-sheet being No. 224/18 under Section 498A of the Indian Penal Code read with Section 4 of Dowry Prohibition Act was filed and the case is now pending before the Learned Additional Chief Judicial Magistrate, Alipurduar.

6. **Mr. Devajyoti Barman, learned counsel for the petitioner** has submitted that the petitioner is a permanent resident of the address as mentioned in the cause title before her marriage and since her birth, and it will be tough for her being a woman and helpless lady having no parents as her guardian, being under the care and guidance of her elder brother, to travel from her residence at Malda to Jaigaon at Alipurduar.
7. That she being an unemployed helpless person having no financial security/capacity to maintain herself has also filed a petition under Section 125 Cr.P.C. pending before the Learned 1st Judicial Magistrate, Malda.
8. Thus the prayer for transfer of G.R. Case No. 1084 of 2018 arising out of Jaigoan Police Station Case No. 129 of 2018 under Section 498A of Indian Penal Code read with Section 4 of Dowry Prohibition Act from the file of the Learned Additional Chief Judicial Magistrate, Alipurduar, to any other competent Magisterial Court within the jurisdiction of the Learned Chief Judicial Magistrate, Malda.

9. **In spite of due notice there is no representation on behalf of the opposite parties no. 2 to 7.**
10. In the present case the First Information Report was registered on 22.06.2018 at Malda, English Bazar women Police Station.
11. Then on the prayer of a LASI (I.O.) of the Police Station, the case was transferred to Jaigaon Police Station, District- Alipurduar and the FIR at Alipurduar was registered on 27.06.2018.
12. Charge Sheet has been submitted on 30.08.2018 being Jaigaon Police Station C.S. No. 224/2018.
13. **Mr. Barman** has placed an order of a coordinate bench where the Court allowing a petition under Section 24 of code of civil procedure, transferred a proceedings under Section 9 of the Hindu Marriage Act as per convenience of the wife.
14. The Judgment in ***Rupali Devi vs State of Uttar Pradesh, 2019 0 AIR (SC) 1790***, has been relied upon by the petitioner, wherein the court held as follows:-

“6. A look at the provisions of Chapter XIII of the Code of Criminal Procedure, 1973 (Cr.P.C) dealing with the jurisdiction of the Criminal Court inquires and trials will now be required. Section 177 of the Code of Criminal Procedure contemplates that “every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed”. It is, therefore, clear that in the normal course, it is the court within whose local jurisdiction the offence is committed that would have the power and authority to take cognizance of the offence in question.

8. Section 178 creates an exception to the “ordinary rule” engrafted in Section 177 by permitting the courts in another local area where the offence is partly committed

to take cognizance. Also if the offence committed in one local area continues in another local area, the courts in the latter place would be competent to take cognizance of the matter. Under Section 179, if by reason of the consequences emanating from a criminal act an offence is occasioned in another jurisdiction, the court in that jurisdiction would also be competent to take cognizance. Thus, if an offence is committed partly in one place and partly in another; or if the offence is a continuing offence or where the consequences of a criminal act result in an offence being committed at another place, the exception to the "ordinary rule" would be attracted and the courts within whose jurisdiction the criminal act is committed will cease to have exclusive jurisdiction to try the offence.

10. The question that has posed for an answer has nothing to do with the provisions of Section 178 (b) or (c). What has to be really determined is whether the exception carved out by Section 179 would have any application to confer jurisdiction in the courts situated in the local area where the parental house of the wife is located.

13. The object behind the aforesaid amendment, undoubtedly, was to combat the increasing cases of cruelty by the husband and the relatives of the husband on the wife which leads to commission of suicides or grave injury to the wife besides seeking to deal with harassment of the wife so as to coerce her or any person related to her to meet any unlawful demand for any property, etc. The above stated object of the amendment cannot be overlooked while answering the question arising in the present case. The judicial endeavour must, therefore, always be to make the provision of the laws introduced and inserted by the Criminal Laws (second amendment) Act, 1983 more efficacious and effective in view of the clear purpose behind the introduction of the provisions in question, as already noticed.

14. "Cruelty" which is the crux of the offence under Section 498A IPC is defined in Black's Law Dictionary to mean "The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (Abuse, inhuman treatment, indignity)". Cruelty can be both physical or mental cruelty. 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 illtreated are aspects that cannot be ignored while understanding the meaning of the expression “cruelty” appearing in Section 498A of the Indian Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatize 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 cause 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.

16. *We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, **also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Indian Penal Code.***”

15. In the present case the investigating is complete, trial is to commence.
16. In view of the observation of the Supreme Court in ***Rupali Devi (Supra)***, in the present case, the Court at Malda, where the petitioner has taken shelter in her parent’s house after being compelled to leave her matrimonial home due to the cruelty inflicted by the accused persons **also has the jurisdiction.**
17. The initial FIR was also registered at Malda. As the initiation of the case occurred at Malda, the police also had the jurisdiction to conduct the

investigation. **The case was transferred to Jaigaon at Alipurduar as the evidence as to the offence/incident if any would be at the alleged place of occurrence being the Matrimonial home of the petitioner at Jaigaon. Investigation is now complete. There are six accused persons. The offence alleged is under Section 498A of IPC.**

18. In ***Kahkashan Kausar @ Sonam & Ors. vs. State of Bihar & Ors.***, **2022 LiveLaw (SC) 141**, the Supreme Court held as follows:-

“Issue Involved

11. *Having perused the relevant facts and contentions made by the Appellants and Respondents, in our considered opinion, the foremost issue which requires determination in the instant case is whether allegations made against the in-laws Appellants are in the nature of general omnibus allegations and therefore liable to be quashed ?*

12. *Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives.*

13. *This Court in its judgment in **Rajesh Sharma and Ors. Vs. State of U.P. & Anr;** (2018) 10 SCC 472, has observed:-*

“14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or

murder of a woman as mentioned in the statement of Objects and Reasons of the Act 46 of 1983. The expression 'cruelty' in Section 498A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be filed under already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement."

14. Previously, in the landmark judgment of this court in **Arnesh Kumar Vs. State of Bihar and Anr;** (2014) 8 SCC 273, it was also observed:-

"4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grandfathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested."

15. Further in **Preeti Gupta & Anr. Vs. State of Jharkhand & Anr;** (2010) 7 SCC 667, it has also been observed:-

"32. It is a matter of common experience that most of these complaints under section 498A 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 are also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber 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 498A 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 fiber, peace and tranquility 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 visualized 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 husband and all his immediate relations is also not uncommon. At times, even after the conclusion of 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 complaint are required to be scrutinized 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 amicable settlement altogether. The process of suffering is extremely long and painful.”

16. In Geeta Mehrotra & Anr. Vs. State of UP & Anr; (2012) 10 SCC 741, it was observed:-

“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of **G.V. Rao vs. L.H.V. Prasad & Ors. reported in (2000) 3 SCC 693** wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

“there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.” The view taken by the judges in this matter was that the courts would not encourage such disputes.”

17. Recently, in K. Subba Rao v. The State of Telangana, (2018) 14 SCC 452 it was also observed that:-

“6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the

husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”

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.”*

And finally the court held:-

“22. *Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the accused appellants, it would be unjust if the Appellants are forced to go through the tribulations of a trial, i.e., general and omnibus allegations cannot manifest in a situation where the relatives of the complainant’s husband are forced to undergo trial. It has been highlighted by this court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must therefore be discouraged.”*

19. The Supreme Court in ***Jyoti Mishra Vs Dhananjaya Mishra, Transfer***

Petition (Criminal) Nos. 94-95 of 2010, on August 27, 2010, held:-

“6. *Otherwise also, we are not inclined to transfer a criminal case from one State to another solely on the ground that it would be more convenient for the complainant (wife) to prosecute the matter there. It is true that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, this Court shows much indulgence to the wife and ordinarily transfers the*

case to a place where it would be more convenient for the wife to prosecute the proceedings.

7. But a criminal case is on a somewhat different footing. The accused may not be able to attend the court proceedings at Indore for many reasons, one of which may be financial constraints, but the consequences of non-appearance of the accused before the Indore Court would be quite drastic. Having regard to the consequences of non-appearance of the accused in a criminal trial, we are loath to entertain the petitioner's prayer for transfer. **In a criminal proceeding, the right of the accused to a fair trial and a proper opportunity to defend himself cannot be ignored for the convenience of the complainant simply because she happens to be the estranged wife."**

20. The Supreme Court in **Santhini vs Vijaya Venketesh, Transfer**

Petition (Civil) No. 1278 of 2016, on 9 October, 2017, held:-

"6. We have heard Mr. V.K. Sidharthan, learned counsel for the petitioner and Mr. Rishi Malhotra, learned counsel for the respondent. We have also heard Mr. Ajit Kumar Sinha, learned senior counsel who has been requested to assist the Court.

7. Before we refer to the scheme under the 1984 Act and the 1955 Act, we think it apt to refer to the decisions that have been noted in Krishna Veni Nagam (supra). In Mona Aresh Goel (supra), the three-Judge Bench was dealing with the transfer of the matrimonial proceedings for divorce that was instituted by the husband in Bombay. The prayer of the wife was to transfer the case from Bombay to Delhi. The averment was made that the wife had no independent income and her parents were not in a position to bear the expenses of her travel from Delhi to Bombay to contest the divorce proceedings. That apart, various inconveniences were set forth and the husband chose not to appear in the Transfer Petition. The Court, considering the difficulties of the wife, transferred the case from Bombay to Delhi. In Lalita A. Ranga (supra), the Court, taking note of the fact that the husband had not appeared and further

appreciating the facts and circumstances of the case, thought it appropriate to transfer the petition so that the wife could contest the proceedings. Be it noted, the wife had a small child and she was at Jaipur and it was thought that it would be difficult for her to go to Bombay to contest the proceedings from time to time. In Deepa's case, the stand of the wife was that she was unemployed and had no source of income and, on that basis, the prayer of transfer was allowed. In Archana Rastogi (supra), the Court entertained the plea of transfer and held that the prayer for transfer of matrimonial proceedings taken by the husband in the Court of District Judge, Chandigarh to the Court of District Judge, Delhi deserved acceptance and, accordingly, transferred the case. Similarly, in Leena Mukherjee (supra), the prayer for transfer was allowed. In Neelam Bhatia (supra), the Court declined to transfer the case and directed the husband to bear the to-and-fro travelling expenses of the wife and one person accompanying her by train whenever she actually appeared before the Court. In Soma Choudhury (supra), taking into consideration the difficulties of the wife, the proceedings for divorce were transferred from the Court of District Judge, South Tripura, Udaipur (Tripura) to the Family Court at Alipore (West Bengal). In Anju Ohri (supra), the Court, on the foundation of the convenience of the parties and the interest of justice, allowed the transfer petition preferred by the wife. In Vandana Sharma (supra), the Court, taking note of the fact that the wife had two minor daughters and appreciating the difficulty on the said bedrock, thought it appropriate to transfer the case and, accordingly, so directed.

8. *Presently, we think it condign to advert in detail as to what has been stated in Anindita Das (supra). The stand of the wife in the transfer petition was that she had a small child of six years and had no source of income and it was difficult to attend the court at Delhi where the matrimonial proceedings were pending. The two-Judge Bench referred to some of the decisions which we have already referred to and also adverted to Ram Gulam Pandit v. Umesh J. Prasad and Rajwinder Kaur v. Balwinder Singh and opined that all the authorities are based on the facts of the respective cases and they do not lay down any particular law which operates as a precedent. Thereafter, it noted that*

taking advantage of the leniency shown to the ladies by this Court, number of transfer petitions are filed by women and, therefore, it is required to consider each petition on merit. Then, the Court dwelled upon the fact situation and directed that the husband shall pay all travel and stay expenses to the wife and her companion for each and every occasion whenever she was required to attend the Court at Delhi. From the aforesaid decision, it is quite vivid that the Court felt that the transfer petitions are to be considered on their own merits and not to be disposed of in a routine manner.”

21. Thus in view of the observation in **Jyoti Mishra (Supra) & Santhini (Supra)**, transferring the present Criminal Case would amount to an abuse of the process of law/court.
22. The petitioner with leave of the Court is at liberty to avail of the video conferencing facility at the District Court at Malda.
23. In **Santhini (Supra)**, the Court held:-

“3. The two-Judge Bench, after hearing the learned counsel for the parties, the learned Additional Solicitor General and the learned Senior Counsel who was requested to assist the Court, made certain references to the doctrine of ‘forum non conveniens’ and held that it can be applied to matrimonial proceedings for advancing the interest of justice. The learned Additional Solicitor General assisting the Court suggested about conducting the proceedings by videoconferencing. In that context, it has been held:-

“14. One cannot ignore the problem faced by a husband if proceedings are transferred on account of genuine difficulties faced by the wife. The husband may find it difficult to contest proceedings at a place which is convenient to the wife. Thus, transfer is not always a solution acceptable to both the parties. It may be appropriate that available technology of videoconferencing is used where both the parties have equal difficulty and there is no place which is convenient to both the parties. We understand that in every district

in the country videoconferencing is now available. In any case, wherever such facility is available, it ought to be fully utilised and all the High Courts ought to issue appropriate administrative instructions to regulate the use of videoconferencing for certain category of cases. Matrimonial cases where one of the parties resides outside court's jurisdiction is one of such 14 (2000) 10 SCC 277 categories. Wherever one or both the parties make a request for use of videoconferencing, proceedings may be conducted on videoconferencing, obviating the needs of the party to appear in person. In several cases, this Court has directed recording of evidence by video conferencing.

x x x x

16. The advancement of technology ought to be utilised also for service on parties or receiving communication from the parties. Every District Court must have at least one e-mail ID. Administrative instructions for directions can be issued to permit the litigants to access the court, especially when litigant is located outside the local jurisdiction of the Court. A designated officer/manager of a District Court may suitably respond to such e-mail in the manner permitted as per the administrative instructions. Similarly, a manager/information officer in every District Court may be accessible on a notified telephone during notified hours as per the instructions. These steps may, to some extent, take care of the problems of the litigants. These suggestions may need attention of the High Courts."

[Emphasis added]

4. *After so stating, the two-Judge Bench felt the need to issue directions which may provide alternative to seeking transfer of proceedings on account of inability of a party to contest proceedings at a place away from their ordinary residence which will eventually result in denial of justice. The safeguards laid down in the said judgment are:-*

"(i) Availability of videoconferencing facility.

(ii) Availability of legal aid service.

(iii) Deposit of cost for travel, lodging and boarding in terms of Order 25 CPC.

(iv) E-mail address/phone number, if any, at which litigant from outstation may communicate.”

Be it stated, the Court took note of the spirit behind the orders of this Court allowing the transfer petitions filed by wives and opined that the Court almost mechanically allows the petitions so that they are not denied justice on account of their inability to participate in proceedings instituted at a different place. It laid stress on financial or physical hardship. It referred to the authorities in the constitutional scheme that provide for guaranteeing equal access to justice, power of the State to make special provisions for women and children, duty to uphold the dignity of women¹⁸ and various steps that have been taken in the said direction.

5. *In the said case, the Court transferred the case as prayed for and further observed that it will be open to the transferee court to conduct the proceedings or record the evidence of the witnesses who are unable to appear in court by way of videoconferencing. The aforesaid decision was brought to the notice of the two-Judge Bench in the instant case by the learned counsel appearing for the respondent who advanced his submission that there is no need to transfer the case and the parties can be directed to avail the facility of videoconferencing. The two-Judge Bench, after referring to the Statement of Objects and Reasons of the Family Courts Act, 1984 (for brevity, ‘the 1984 Act’), various provisions of the said Act, Sections 22, 23 and 26 of the 1955 Act, Rules 2, 3 and 4 of Order XXXIIA which were inserted by the 1976 amendment to the Code of Civil Procedure (for short, “the CPC”), the concept of reconciliation, the role of the counsellors in the Family Court and the principle of confidence and confidentiality, held:-*

“19. To what extent the confidence and confidentiality will be safeguarded and protected in video conferencing, particularly when efforts are taken by the counsellors, welfare experts, and for that matter, the court itself for reconciliation, restitution of conjugal rights or dissolution of marriage, ascertainment of the wishes of the child in

custody matters, etc., is a serious issue to be considered. It is certainly difficult in video conferencing, if not impossible, to maintain confidentiality. It has also to be noted that the footage in video conferencing becomes part of the record whereas the reconciliatory efforts taken by the duty-holders referred to above are not meant to be part of the record. All that apart, in reconciliatory efforts, physical presence of the parties would make a significant difference. Having regard to the very object behind the establishment of Family Courts Act, 1984, to Order XXXIIA of the Code of Civil Procedure and to the special provisions introduced in the Hindu Marriage Act under Sections 22, 23 and 26, we are of the view that the directions issued by this Court in Krishna Veni Nagam (supra) need reconsideration on the aspect of video conferencing in 12 matrimonial disputes.”

Being of this view, it has referred the matter to be considered by a larger Bench. That is how the matter has been placed before us.

44. *We, as advised at present, constrict our analysis to the provisions of the 1984 Act. First, as we notice, the expression of desire by the wife or the husband is whittled down and smothered if the Court directs that the proceedings shall be conducted through the use of videoconferencing. As is demonstrable from the analysis of paragraph 14 of the decision, the Court observed that wherever one or both the parties make a request for the use of videoconferencing, the proceedings may be conducted by way of videoconferencing obviating the need of the parties to appear in person. The cases where videoconferencing has been directed by this Court are distinguishable. They are either in criminal cases or where the Court found it necessary that the witness should be examined through videoconferencing. In a case where the wife does not give consent for videoconferencing, it would be contrary to Section 11 of the 1984 Act. To say that if one party makes the request, the proceedings may be conducted by videoconferencing mode or system would be contrary to the language employed under Section 11 of the 1984 Act. The said provision, as is evincible to us, is in consonance with the constitutional provision which confer affirmative rights on women that cannot be*

negated by the Court. The Family Court also has the jurisdiction to direct that the proceedings shall be held in camera if it so desires and, needless to say, the desire has to be expressed keeping in view the provisions of the 1984 Act.”

The Court has discouraged hearing before a family court through video conferencing but not in a criminal case. The present case is a criminal case.

24. The ***State of Maharashtra vs Dr. Praful B. Desai, Appeal (crl.) 476 of 2003 and 477 of 2003, on 01.04.2003***, the Supreme Court held:-

“24. To be remembered that what is being considered is recording evidence on commission. Fixing of time for recording evidence on commission is always the duty of the officer who has been deputed to so record evidence. Thus the officer recording the evidence would have the discretion to fix up the time in consultation with VSNL, who are experts in the field and who, will know which is the most convenient time for video conferencing with a person in USA. The Respondent and his counsel will have to make it convenient to attend at the time fixed by the concerned officer. If they do not remain present the Magistrate will take action, as provided in law, to compel attendance. We do not have the slightest doubt that the officer who will be deputed would be one who has authority to administer oaths. That officer will administer the oath. By now science and technology has progressed enough to not worry about a video image/audio interruptions/distortions. Even if there are interruptions they would be of temporary duration. Undoubtedly an officer would have to be deputed, either from India or from the Consulate/Embassy in the country where the evidence is being recorded who would remain present when the evidence is being recorded and who will ensure that there is no other person in the room where the witness is sitting whilst the evidence is being recorded. That officer will ensure that the witness is not coached/tutored/prompted. It would be advisable, though not necessary, that the witness be asked to give evidence in a room in the Consulate/Embassy. As the evidence is being recorded

on commission that evidence will subsequently be read into Court. Thus no question arises of the witness insulting the Court. If on reading the evidence the Court finds that the witness has perjured himself, just like in any other evidence on commission, the Court will ignore or disbelieve the evidence. It must be remembered that there have been cases where evidence is recorded on commission and by the time it is read in Court the witness has left the country. There also have been cases where foreign witness has given evidence in a Court in India and that then gone away abroad. In all such cases Court would not have been able to take any action in perjury as by the time the evidence was considered, and it was ascertained that there was perjury, the witness was out of the jurisdiction of the Court. Even in those cases the Court could only ignore or disbelieve the evidence. The officer deputed will ensure that the Respondent, his counsel and one assistant are allowed in the studio when the evidence is being recorded. The officer will also ensure that the Respondent is not prevented from bringing into the studio the papers/documents which may be required by him or his counsel. We see no substance in this submission that it would be difficult to put documents or written material to the witness in cross-examination. It is now possible, to show to a party, with whom video conferencing is taking place, any amount of written material. The concerned officer will ensure that once video conferencing commences, as far as possible, it is proceeded with without any adjournments. Further if it is found that Dr Greenberg is not attending at the time/s fixed, without any sufficient cause, then it would be open for the Magistrate to disallow recording of evidence by video conferencing. If the officer finds that Dr. Greenberg is not answering questions, the officer will make a memo of the same. Finally when the evidence is read in Court, this is an aspect which will be taken into consideration for testing the veracity of the evidence. Undoubtedly the costs of video conferencing would have to be borne by the State.”

25. CRR 327 of 2019 is dismissed.

26. No order as to costs.

27. All connected Applications stand disposed of.

28. Interim order if any stands vacated.
29. Let a copy of this judgment be sent to the learned Trial Court and the learned District Judge, Malda for necessary compliance.
30. Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)