

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 647 of 2019

Prithvish Roy

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Mayukh Mukherjee,
Mr. Abhishek Dutt,
Ms. Rupa Singh.

For the State : None.

For the Opposite Party no. 2 : Mr. Ayan Basu,
Mr. Koushik Bhattacharyya,
Mr. Sumit Routh.

Heard on : 20.03.2023

Judgment on : 03.05.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding being Complaint Case No. 41 of 2018 under Sections 323/498A/406/506/34 of the Indian Penal Code pending before the Court of the Learned Judicial Magistrate, First Class Court at Barrackpore.
2. The Petitioner's case is that the Petitioner is the Husband of the opposite party no. 2. On February 6, 2018, the opposite party no. 2 herein filed a complaint application against the petitioner (husband) and his other family members under Section 200 of CRPC before the Court of the Learned Additional Chief Judicial Magistrate at Barrackpore [in short the Learned ACJM] therein alleging commission of offences punishable under Sections 323/498A/406/506/34 of the Indian Penal Code.
3. Vide order dated February 6, 2018 the Learned ACJM was pleased to take cognizance and transferred the case to the Learned Judicial Magistrate, First Class, First Court at Barrackpore [in short the Learned Trial Magistrate] for disposal and the Learned Trial Magistrate was pleased to issue process.
4. It is the case of the petitioner that, on June 30, 2013, the opposite party no. 2 got married to the Petitioner Prithvish Roy, according to Hindu rites and customs.

5. On or about 09.09.2014, the petitioner and the opposite party no. 2 visited Dr. H. Narmada, a Fertility Centre Hospital for consultation to ascertain the reason for the opposite party no. 2 having Constant Uterine bleeding. Dr. Narmada advised the opposite party no. 2 to undergo a surgery and accordingly a large tumor operation was performed on 14.09.2014 for removal of extra uterine Growth. She was brought back to the Petitioner's home where the petitioner took care of her.
6. The opposite party no. 2 then went back to Kolkata on 06.01.2015 to attend her brother's wedding. She stayed at her parent's home at Kolkata. She never returned back to join her husband since then.
7. She, however, for some reason or the other kept avoiding the petitioner calls and his attempts to persuade her to come back.
8. Having no other alternative the petitioner filed a petition on 23.06.2015 under Section 9 of the Hindu Marriage Act, 1955, seeking Restitution of Conjugal Rights which was registered as OP No. 465/2015
9. Even after waiting for more than 15 months, as the petitioner did not receive any response from the opposite party no. 2, the petitioner filed an application on 03.09.2016 under Section 13 of the Hindu Marriage Act, 1955 for Divorce.
10. In the meantime, the Petitioner found that the opposite party no. 2 had stolen all the jewellery kept in the locker jointly held by the opposite party no. 2 and Petitioner by operating it singly. On ascertaining that the jewellery which were removed were ancestral property and that the

opposite party no. 2 had no right, title or interest on that, the Petitioner lodged a First information Report with Marredpally Police Station at Secunderabad on 30th July 2017 which was registered as Marredpally Police Station Case No. 279 of 2017 dated 7th October 2017 under Section 406 read with Section 409 of the Indian Penal Code.

11. On 6th November, 2017 the Investigating Agency filed Charge-Sheet under Sections 406/409 of the IPC against the opposite party no. 2 which is pending for disposal.
12. Subsequent to the FIR registered by the Petitioner the opposite party no. 2 herein moved a petition under Section 24 of Cr.P.C. before the Hon'ble Supreme Court of India Seeking transfer of divorce petition pending before the Learned City Civil Court, Secunderabad, Telangana to the jurisdiction of the Learned District Judge at Alipore which was registered as T.P. (Civil) No. 2241 of 2017 and secured a stay on the divorce proceeding.
13. The petitioner submits that even if the prosecution case and the petition of complaint were taken to be true in its entirety, it does not disclose even prima facie the commission of the said offences punishable under Sections 323/498A/406/506/34 of the Indian Penal code.
14. **Mr. Mayukh Mukherjee, learned counsel for the petitioner** has submitted that the instant proceeding as initiated against the present petitioner is absolutely baseless, frivolous and displays a clear misuse of

the provisions of criminal law and fails to disclose any commission of offence by the petitioner.

15. The petitioner is completely innocent and in no way connected with commission of any offence far less the offences alleged.
16. It is further submitted that the ingredients required to constitute the offences alleged are totally absent and as such in the interest of justice the proceedings in this case is liable to be quashed. Supplementary affidavit has been filed by the petitioner.
17. In the present case, the opposite party no. 2 has filed a complaint case before the Trial Court at Barrackpore for offences punishable under Sections 323/498A/406/506/34 IPC.
18. It is stated in the petition of complaint that the marriage was solemnized on 30.06.2013. Valuable gifts were given by her family at the time of marriage.
19. In December, 2013 the petitioner allegedly demanded a sum of Rs. 4,00,000 as dowry. The accuseds were allegedly not happy with the articles given in marriage and inflicted mental and physical torture upon her.
20. The complainant was allegedly not given proper food or clothing and abused in filthy language and was allegedly driven out of her matrimonial home on 06.01.2015, after about one and half year of marriage.

21. It is further alleged that on 24.12.2017, the petitioners came to house of the complainant to get a no objection for divorce and assaulted her and her father, for which the present complaint case has been filed.
22. Affidavit in opposition has been filed by the opposite party denying the case of the petitioner.
23. **Mr. Ayan Basu, learned counsel for the opposite party no. 2** has submitted that the provision under Section 202 Cr.P.C. has been duly complied. And that the Magistrate being satisfied has taken cognizance and issued process on there being prima facie materials on record to proceed towards trial. As such if there is an interference by this court it will be against the interest of Justice.
24. **Section 498A of the Indian Penal Code, lays down:-**

“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 purposes 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 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.”

25. Section 406 of the Indian Penal Code, lays down:-

“406. Punishment for criminal breach of trust.— Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ingredients of offence.— The essential ingredients of the offence under Sec. 406 are as follows:-

- (1) Mens rea is essential ingredient of offence.
- (2) There must be an entrustment, there must be misappropriation or conversion to one’s own use, or use in violation of a legal direction or of any legal contract.
- (3) The accused was entrusted with the property or domain over it.
- (4) He dishonestly misappropriated or converted to his own use such property;
- (5) He dishonestly used or disposed of that property or willfully suffered any other person to do so in failure of-
 - (a) Any direction of law prescribing the mode in which such trust is to be discharged, or
 - (b) Any legal contract made touching upon the discharge of such trust.”

26. In the present case, the husband has filed a prior case at Telengana on 30.07.2017 (registered as FIR on 07.10.2017) under Section 406/409 IPC on the ground that the complainant took away the

ancestral jewellery of the petitioner's family from the bank locker by operating it singly without informing the husband. The said case has ended in Charge Sheet. The complaint in the present case has been filed on 06.02.2018.

27. In **Kahkashan Kausar @ Sonam & Ors. vs. State of Bihar & Ors.**, **2022 LiveLaw (SC) 141, on 08th February, 2022**, 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.”

28. **From the materials on record it is prima facie evident that the “cruelty” as alleged in the present case do not constitute the ingredients required to constitute the offence under Section 498A IPC. The ingredients required to constitute the offence of “criminal breach of trust” under Section 406 IPC is also prima facie not present in this case against the petitioners. Finally the ingredients required to constitute the offences under Section 323/506 IPC is also clearly absent in this case.**
29. Thus, it is seen that the materials in the case diary and the charge sheet there in do not prima facie make out a case of cognizable offence as alleged against the accused/petitioner and there is no materials for proceeding against the accused/petitioner towards trial and this is a fit case where the inherent power of the court should be exercised.
30. In the Present case there is no substance in the allegations and no material exists to prima facie make out the complicity of the applicant in a cognizable offence, as such the proceedings in this case should be quashed.
31. **CRR 647 of 2019 is accordingly allowed.**
32. The proceedings being Complaint Case No. 41 of 2018 under Sections 323/498A/406/506/34 of the Indian Penal Code, 1860 pending before the Court of the Learned Judicial Magistrate, First Class First Court at Barrackpore, is hereby quashed.
33. No order as to costs.

34. All connected Applications stand disposed of.
35. Interim order if any stands vacated.
36. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
37. Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)