

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1013 of 2020

Malay Saha

Vs.

State of West Bengal & Ors.

For the Petitioner : Ms. Debipriya Mitra,
Ms. Sudakshina Dey.

For the State : Ms. Purnima Ghosh.

For the Opposite Party No. 2 : None.

For the Opposite Party No. 3 : Ms. Manasi Roy.

Heard on : 04.05.2023

Judgment on : 09.06.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the charge sheet proceedings in Baranagar Police Station case No.472 of 2017 corresponding case number being GR 4149 of 2017 under Sections 498A/406/506/323/34 of the Indian Penal Code pending before the learned Judicial Magistrate, 5th Court, Barrackpore, North 24 Parganas.

2. The petitioner's case is that the opposite party no.3 i.e. the proforma opposite party is a cousin brother of the petitioner residing at 54A, Gurupada Halder Road, Police Station-Kalighat, Kolkata-700 026.

3. The opposite party no.2 and opposite party no.3 got married to each other on 20.01.2016 and the petitioner had taken several responsibilities pertaining to the said marriage.

4. After the said marriage was solemnized, the opposite party no. 2 and proforma opposite party no. 3 started to reside as husband and wife at 54/A, Gurupada Halder Road, Kolkata-700 026, District-24 Parganas.

5. During this period the petitioner was residing at 1094, Kalikapur Main Road, Post Office-Mukundapur, Kolkata-700 099 and thus had no connection with the opposite party no.2 and 3 in any way.

6. Sometime in the month of September, 2016 the opposite party no.3 informed the petitioner that there has been some misunderstanding between him and the opposite party no.2 and subsequently the opposite party no.2 has left her matrimonial home.

7. The petitioner presuming such dispute by and between the opposite party no. 2 and 3 as a normal misunderstanding agreed to mediate and thus talked to the parents of the opposite party no.2 with the intention to resolve the dispute between the opposite parties as any person of ordinary prudence would have done.

8. On such intervention by the petitioner, the opposite party no. 2 returned to her matrimonial home at 54/A, Gurupada Halder Road, Police Station-Kalighat, Kolkata-700 026. Thereafter, again the opposite party nos. 2 and 3 started to lead their conjugal life at 54/A, Gurupada Halder Road,

Police Station-Kalighat, Kolkata-700 026. The petitioner was neither involved, nor aware about the conjugal relation between the opposite party no.2 and the proforma opposite party no.3.

9. On July 2017 the petitioner received a notice under 41(A) of the Code of Criminal Procedure, 1973 and came to know that the opposite party no.2 had filed a complaint and subsequently a F.I.R has been registered against the petitioner along with the opposite party no.3 being the husband of the opposite party no.2 and such FIR was registered under Sections 498A/406/506/323/34 of the India Penal Code. It is stated that the opposite party no.2 has lodged such F.I.R with malafide intention to harass the petitioner.

10. The petitioner complied with the notice under Section 41(A) of the Code of Criminal Procedure, 1973, and met the investigating authorities.

11. **Ms. Debipriya Mitra, learned counsel for the petitioner** has submitted that the opposite party no.2 has also preferred a false and frivolous proceeding under the provisions Domestic Violence Act, 2005.

12. It is submitted that the FIR lodged by the opposite part no.2 is a result of personal vendetta. The investigating authorities have submitted the impugned charge sheet without conducting any investigation.

13. That the charge sheet has been submitted by the investigating officer in connivance with the opposite party no.2.

14. And for that this instant proceeding is liable to be quashed.

15. **In spite of due service there is no representation on behalf of the opposite party no.2.**

16. **The opposite party no.1/State is represented through Ms. Purnima Ghosh.**

17. **Ms. Manasi Roy has appeared on behalf of the opposite party no. 3.**

18. Certified copy of the case diary is placed by the learned counsel for the State.

19. From the records, it appears that the petitioner has complied with the notice under Section 41A of IPC.

20. In ***Arnesh Kumar vs State of Bihar and Anr., Criminal Appeal No. 1277 of 2014, on 2 July, 2014***, the Supreme Court laid down the guidelines regarding arrest in cases where the punishment is less than seven years of imprisonment. The present case is one such.

21. **The petitioner is the cousin of the husband of the defacto complainant and he allegedly asked for dowry over phone along with the complainant's husband.**

22. **Section 498A 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 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.”

23. 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.”*

24. From the materials on record and the case diary more specifically the written complaint, the only statement against the petitioner is that he allegedly asked for dowry over phone along with the opposite party no. 3, husband of the opposite party no. 2/complainant. All the allegations are against opposite party no. 3, the husband of the opposite party no. 2/complainant. The conduct as alleged by the complainant against the petitioner in no way constitutes ‘cruelty’ as defined/laid down under Section

498A IPC. The ingredients required to constitute the said offence is not present in the present case.

25. It is thus 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 against the accused/petitioner as alleged 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 to prevent abuse of process of Court/law.

26. The ultimate test therefore, is whether the allegations have any substance (***Prakash Singh Badal Vs State of Punjab, AIR 2007 SC 1274***).

27. In the Present case there is no substance in the allegations and no material exists to prima facie make out the complicity of the petitioners in a cognizable offence and as such the proceedings in this case is liable to be quashed.

28. **CRR 1013 of 2020 is thus allowed.**

29. The proceedings in Baranagar Police Station case No.472 of 2017 corresponding case number being GR 4149 of 2017 under Sections 498A/406/506/323/34 of the Indian Penal Code pending before the learned Judicial Magistrate, 5th Court, Barrackpore, North 24 Parganas, is hereby quashed.

30. No order as to costs.

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

(Shampa Dutt (Paul), J.)