

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 877 of 2019

Sarju Kumar Sarkar & Ors.

Vs

The State of West Bengal & Anr.

For the Petitioners : Mr. Pradyat Saha.

For the State : Mr. S. G. Mukherjee,
Mr. Imran Ali,
Ms. Debjani Sahu.

For the Opposite Party no. 2 : None.

Heard on : 03.01.2023

Judgment on : 19.01.2023

Shampa Dutt (Paul), J.:

The present revision has been filed praying for quashing of the proceeding pending before the learned Additional chief Judicial Magistrate Court at Serampur, Hooghly arising from Jangipara, P.S. Case No. 279 of 2018 dated 18.12.2018 under Section 498A/406/504/506/34 of Indian Penal Code, 1860.

The petitioner No. 1 is the husband, petitioner No. 2 is the mother-in-law and petitioner Nos. 3 and 4 are the sisters-in-law of the complainant/informant, who lodged a complaint/F.I.R. being No. 279/2018 dated 18.12.2018 with the Officer-in-Charge, Jangipara alleging that the defacto complainant was married to the petitioner no. 1 on 24.01.2018, according to Hindu Rites and Customs.

It is alleged that the petitioners had gone to the house of the opposite party no. 2 on 09.12.2018 and threatened her and also used filthy language. As such the Case has been lodged.

Mr. Pradyat Saha, Learned Counsel for the petitioners has submitted that the prima-facie evidences, documents are in favour of the petitioners and as such the entire proceeding is liable to be set aside/quashed against the petitioners by this Hon'ble Court.

The entire story of prosecution is baseless, false and same has been done only to humiliate and hamper the social life of the petitioners

and if the proceeding is not quashed the petitioners shall suffer irreparable loss and injury and there will be serious miscarriage of justice.

Learned Counsel for the opposite party no. 2 has not appeared inspite of notice.

Mr. S.G. Mukherjee learned public prosecutor has produced the case diary and has submitted that there are statements of witnesses recorded under Section 161 Cr.P.C. which support the case of the complainant.

Learned Counsel for the petitioner has filed a copy of the judgment/order dated 09.05.2022 of the Family Court No. 2, Nagpur, **granting a decree of divorce to the parties in this case.**

From the materials in the case diary, the record of the Court and the submission of the Learned Counsels for the petitioners and the State it is evident that the marriage took place on 24.01.2018.

The Complaint in this Case has been filed on 18.12.2018, within a year of marriage.

The allegation is that on 09.12.2018 at about 18.30 hrs the petitioners went to the opposite party no. 2's house and threatened her with dire consequences.

Learned Counsel for the petitioner has relied upon the attendance sheet of the petitioner no. 1 who was employed with the South-East-Central Railway, Nagpur Division showing that on 9th Dec, 2018 (the alleged date of incident) the petitioner no. 1 was present on duty at Nagpur. It is thus not possible to come on the same day at 18.30 hrs. (just after office hours) from Nagpur and threaten the petitioner at Jangipara, Hooghly, West Bengal, (a distance of 1,104.8 kms).

It is thus also not prima facie believable that just to threaten the opposite party no. 2, the petitioner no. 1 would come to Jangipara, Hooghly **on the same day** at 6.30 p.m. when he attended office at Nagpur.

As such prima facie it appears that the said allegation is not correct. Another irregularity is that inspite of being threatened allegedly on 09.12.2018, she filed the case on 18.12.2018 after a delay of almost 10 days.

The offences alleged in the charge sheet are under Sections 498A/406/34 of the Indian Penal Code.

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 pun-

ished 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 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.”

Section 406 IPC 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."*

“Criminal Breach of trust” is defined under Section 405

Indian Penal Code:-

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.”

From the materials on record and in the case diary there is no evidence to show that the complainant was subjected to “Cruelty” of such nature as defined under Section 498A IPC. The only allegation is of being threatened allegedly on 09.12.2018, when the absence of the

petitioner no. 1 (husband) has been proved by documents nor is there any material or evidence to show that there was “entrustment” and “misappropriation” as required under Section 406 IPC.

The parties have been divorced on 09.05.2022.

The allegations made by the defacto complainant has been proved to be prima facie false as the attendance sheet (at Nagpur) of the petitioner no. 1 prima facie (Document as proof) has been produced to prove his presence at Nagpur (a distance of 1104.8 kms) from the alleged place of occurrence at Jangipara (Hooghly).

This prima facie proves that the defacto complaint/wife has misused the provisions of law, which has been enacted to help distressed wives.

Thus the opposite party no. 2/wife has clearly abused the process of court and law and interference by this Court is required for ends of justice.

The judgment of the Supreme Court in **Kahkashan Kausar @ Sonam & Ors. vs. State of Bihar & Ors., 2022 LiveLaw (SC) 141**, is very relevant to this case, the Supreme Court held:-

“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.”

Thus it is found that the allegation in present case as discussed earlier are prima facie not correct and are general in

nature. No specific allegations regarding commission of any cognizable offences have been made against any of the petitioners.

In Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). 2060 of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022), the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

*23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :*

‘7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding

to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. *Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :*

'102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the

*proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.’ Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”*

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :*

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their

entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd.***

v. State of Maharashtra and Others, 2021 SCC Online SC 315.”

Accordingly, **CRR 877 of 2019 is allowed.**

The proceedings in Jangipara P.S. Case No. 279 of 2018 dated 18.12.2018 under Section 498A/406/504/506/34 of Indian Penal Code, 1860, pending before the learned Additional Chief Judicial Magistrate Court, Serampur, Hooghly is hereby quashed.

There will be 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.)