

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1089 of 2019

Tamal Krishna Ghosh

Vs.

State of West Bengal & Anr.

For the Petitioner : Mr. Satyendra Agarwal,
Mr. Bijoy Bag,
Mr. Goutam Malik.

For the State : Ms. Puspita Saha.

For the Opposite Party : None.
No. 2

Hearing concluded on : 16.08.2023

Judgment on : 14.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of Basirhat Police Station Case No. 386 of 2018 dated 28.07.2018 under Sections 498A/307/328/201 of the Indian Penal Code corresponding to G.R. Case No. 2895 of 2018.

2. The petitioner's case is that a marriage was solemnized between the parties in the year of 2010 and the said marriage was duly Registered before the Marriage Registrar on 24.11.2014 vide Marriage Certificate Sl. No. 09/2014 and the place of marriage was 'Ashrampara', Post Office and Police Station – Basirhat, District North 24 Parganas.
3. After solemnization of the said marriage the petitioner and the opposite party were living together as husband and wife and the said marriage was consummated, but the opposite party did not live with the petitioner (at a time) for seven day continuously. She used to live with the petitioner for a day or two and thereafter return to her paternal house.
4. **On 05.04.2018, the opposite party left her matrimonial house** on her own accord and since then she has been residing at her paternal house without any just or sufficient cause. The petitioner is still willing to live with the opposite party.
5. The petitioner has filed an application for Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act, 1955 being Matrimonial Suit No. 35 of 2018 before the Learned Additional District & Sessions Judge at Basirhat.
6. The opposite party/respondent wife contested the Matrimonial Suit No. 35/2018 and filed a written statement together with counter claim under Section 23A of Hindu Marriage Act, 1955 praying for decree of Divorce under Section 13(1)(1a) of Hindu Marriage and Act, 1955 and denied the allegation in the said Matrimonial Suit No. 35 of 2018.

- 7. The wife/opposite party lodged a complaint on 28.07.2018** and F.I.R. No.386, Basirhat Police Station dated 28.07.2018 under Sections 498/307/328/201 I.P.C. was registered as a counter blast to the Matrimonial Suit filed by the accused person, being guided by the ill motive of the wife/opposite party. The wife/opposite party had appeared on 27.06.2018 before the Matrimonial Court by filing her Vokatnama and thereafter with ill motive lodged the complaint on 28.07.2018.
- 8.** The Investigating Officer in the case has submitted charge sheet being No. 826/18 dated 29.10.2018 under Section 498A I.P.C. against the petitioner/accused person/husband.
- 9.** As per the FIR, the de facto complainant has been allegedly driven away from her matrimonial house on 15.04.2018 but the FIR has been lodged on 28.07.2018 after a considerable amount of delay (after almost three months).
- 10. Mr. Satyendra Agarwal, learned counsel for the petitioner** has submitted that the Learned A.C.J.M. had observed on 04.08.2018 that the case as projected in the FIR by the complainant appears to be improbable at least at that stage, in the light of such documents and for which the accused person is entitled to bail.
- 11.** It is further submitted that as such the impugned proceeding is clearly an abuse of the process of law, the same is liable to be quashed in the interest of justice.
- 12.** Supplementary affidavit has been filed by the petitioner. The statements therein are not related to the present proceedings.

13. Ms. Puspita Saha, learned counsel for the State has placed the case diary.

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

15. From the materials on record including the case diary it appears that:-

- i) The parties were married in the year 2010, which was registered on 24.11.2014.
- ii) The opposite party no. 2 left her matrimonial home on 05.04.2018.
- iii) The petitioner is still willing to live with the opposite party no. 2.
- iv) The petitioner filed a suit for restitution of conjugal right on 15.05.2018.
- v) On 27.06.2018, the opposite party no. 2 filed a counter claim in the matrimonial suit praying for a decree of divorce.
- vi) On 28.07.2018, she filed the complaint in the present case.

16. 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 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 demand.

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

- (1) A woman was married;
- (2) She was subjected to cruelty;
- (3) Such cruelty consisted in —
 - (i) Any willful 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.”

17. In **Kahkashan Kausar @ Sonam & Ors. vs. The 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.”

18. In ***Abhishek vs State of Madhya Pradesh, Criminal Appeal No. 1456 of 2015 & Criminal Appeal No. 1457 of 2015, on August 31, 2023***, the Supreme Court held:-

*“11. This being the factual backdrop, we may note at the very outset that the **contention** that the appellants' quash petition against the FIR was liable to be dismissed, in any event, as the chargesheet in relation thereto was submitted before the Court and taken on file, **needs mention only to be rejected.***

It is well settled that the High Court would continue to have the power to entertain and act upon a petition filed under Section 482 Cr.P.C. to quash the FIR even when a chargesheet is filed by the police during the pendency of such petition [See Joseph Salvaraj A. vs. State of Gujarat and others {(2011) 7 SCC 59}]. This principle was reiterated in Anand Kumar Mohatta and another vs. State (NCT of Delhi), Department of Home and another [(2019) 11 SCC 706]. This issue, therefore, needs no further elucidation on our part.

*12. The contours of the power to quash criminal proceedings under Section 482 Cr.P.C. are well defined. In **V. Ravi Kumar vs. State represented by Inspector of Police, District Crime Branch, Salem, Tamil Nadu and others [(2019) 14 SCC 568]**, this Court affirmed that where an accused seeks quashing of the FIR, invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint.*

*In **M/s. Neeharika Infrastructure (P). Ltd. vs. State of Maharashtra and others [Criminal Appeal No.330 of 2021, decided on 13.04.2021]**, a 3-Judge Bench of this Court elaborately considered the scope and extent of the power under Section 482 Cr.P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare cases, such standard not being confused with the norm formulated in the context of the death penalty.*

It was further observed that while examining the FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made

therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, and more particularly, the parameters laid down by this Court in **R.P. Kapur vs. State of Punjab (AIR 1960 SC 866)** and **State of Haryana and others vs. Bhajan Lal and others [(1992) Supp (1) SCC 335]**, the Court would have jurisdiction to quash the FIR/complaint.

13. Instances of a husband's family members filing a petition to quash criminal proceedings launched against them by his wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty abound on this score. We may now take note of some decisions of particular relevance. Recently, in **Kahkashan Kausar alias Sonam and others vs. State of Bihar and others [(2022) 6 SCC 599]**, this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC.

Noting that the foremost issue that required determination was whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial disputes. This Court observed that false implications by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked, would result in misuse of the process of law.

On the facts of that case, it was found that no specific allegations were made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict severe scars upon the accused and such an exercise ought to be discouraged.

14. In **Preeti Gupta and another vs. State of Jharkhand and another [(2010) 7 SCC 667]**, this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed that 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, as allegations of harassment by

husband's close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection.

15. Earlier, in **Neelu Chopra and another vs. Bharti [(2009) 10 SCC 184]**, this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the 'be all and end all' of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that offence. These observations were made in the context of a matrimonial dispute involving Section 498A IPC.

16. Of more recent origin is the decision of this Court in **Mahmood Ali and others vs. State of U.P. and others (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023)** on the legal principles applicable apropos Section 482 Cr.P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.P.C. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely.

It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

17. In **Bhajan Lal (supra)**, this Court had set out, by way of illustration, the broad categories of cases in which the inherent power under Section 482 Cr.P.C. could be exercised. Para 102 of the decision reads as follows:

'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 Act concerned (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 Act concerned, 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.”

19. Thus, it is prima facie on record that the opposite party no. 2 asked for divorce when the petitioner prayed for restitution of conjugal right.

20. The complaint in the present case was filed after almost 2 ½ months, after the petitioner filed the suit for restitution of conjugal right and after **almost three months of leaving her matrimonial home.** The opposite party no. 2 also prayed for divorce in the said case.

21. Thus, all these facts clearly show that there is absolutely no materials in the case diary to prima facie show that the ingredients required to constitute the offence alleged under Section 498A IPC is present against the petitioner.

22. The revisional application being CRR 1089 of 2019 is accordingly allowed.

23. The proceedings in Basirhat Police Station Case No. 386 of 2018 dated 28.07.2018 under Sections 498A/307/328/201 of the Indian Penal Code corresponding to G.R. Case No. 2895 of 2018 and charge sheet being no. 826 of 2018 dated 29.10.2018 under Section 498A IPC are quashed in respect of the petitioner Tamal Krishna Ghosh.

24. All connected applications, if any, stands disposed of.

25. Interim order, if any, stands vacated.

- 26.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 27.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)