

**Form No.J(1)**

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL APPELLATE JURISDICTION**

Present:

**The Hon'ble Justice Tirthankar Ghosh**

**C.R.R.2641 of 2021  
With  
CRAN 1 of 2022**

***Smt. Jyoti Kumari Sharma @ Joti Sharma*  
versus  
The State of West Bengal and another**

For the Petitioner : Mr. Anirban Mitra,  
Mr. Santosh Kumar Pandey.

For the State : Mr. Prasun Kumar Datta,  
Mr. Santanu Deb Roy,  
Md. Kutubuddin.

**Heard On : 18.04.2023**

**Judgement On : 18.04.2023**

**Tirthankar Ghosh, J. :**

The present revisional application has been preferred challenging the proceedings arising out of Uttarpara Police Station Case No.475 of 2018 dated 29.06.2018 under Sections 498A/323/34 of the Indian Penal Code.

Record reflects that on conclusion of investigation, charge-sheet has been submitted before the jurisdictional court and the learned Judicial Magistrate, 2<sup>nd</sup> Court, Serampore was pleased to frame charges on an appreciation of the materials presented/relied upon by the prosecution.

It has been informed on behalf of the petitioner that the next date has been fixed for evidence of P.W.1.

The case was initiated on the basis of an application under Section 156(3) of the Code of Criminal Procedure filed by one Punam Sharma against Jai Karan Sharma, father-in-law, Gyatri Sharma, mother-in-law, Yogesh Sharma, brother-in-law and Jyoti Sharma, sister-in-law. The allegations in the application under Section 156(3) of the Code of Criminal Procedure which has been treated to be the First Information Report of the instant case are to the effect that the complainant was married with Khakhan Sharma on 26.11.1996, it was inter caste marriage out of an affair which developed between the complainant and the said Khakhan Sharma. The accused persons are the in-laws and they did not accept such relationship and immediately after marriage inflicted physical and mental torture on the complainant. After marriage, the four accused persons demanded a sum of Rs.5,00,00/- from the complainant for accepting her as a wife for

belonging to a different caste, on being refused they became violent and inflicted physical and mental torture upon her. The complainant alleges that on 10.06.2018 the accused persons assaulted the complainant and threatened her of dire consequences. Such incident was reported to Uttarpara Police Station but no action was taken, she also sent a written complaint on 11.06.2018 to Inspector-in-Charge, Uttarpara Police Station and Commissioner of Police, Chandannagar through registered post with acknowledgement due, but no action being taken she filed the instant case under Section 156(3) of the Code of Criminal Procedure

Learned ACJM, Serampore on receipt of such application under Section 156(3) of the Code of Criminal Procedure was pleased to direct the Inspector-in-Charge, Uttarpara Police Station to investigate the case treating the petition of complaint as FIR and consequently Uttarpara Police Station Case No.475 of 2018 dated 29.06.2018 was registered for investigation.

The Investigating Agency on conclusion of investigation submitted charge-sheet being Uttarpara Police Station Charge-sheet No.536 of 2018 dated 31.07.2018 under Sections 498A/34 of the Indian Penal Code against the four accused persons named above. The Investigating Agency in order to substantiate their charge-sheet relied upon five

witnesses namely the complainant, Punam Sharma, her husband Khakan Sharma, Bipin Sharma, Sandip Sharma and Upendra Pandey.

I have considered the statements and I find that in this case which has been registered under Section 498A of the Indian Penal Code, the husband has been made a witness while the in-laws have been made an accused. The consistent statement by all the witnesses relate to demand of dowry at the instance of the in-laws. Surprisingly, the husband Khakhan Sharma in his statement under Section 161 of the Code of Criminal Procedure has also reiterated such contention which was in the form of allegation in the FIR in the application under Section 156(3) of the Code of Criminal Procedure.

Mr. Mitra, learned advocate appearing for the petitioner submits that the present case has been initiated out of private and personal grudge only after the civil court passed a decree of eviction against the husband of the complainant for vacating the portion occupied by them in the property. Attention of the Court has been drawn to the judgment passed by the Civil Judge as well as the appellate court. It has also been emphasised that the marriage took place in the year 1996 and the complaint was lodged in the month of June, 2018, almost after 22 years of marriage. Learned advocate emphasises that the provisions of the Indian Penal Code has been invoked with an evil design in close

proximity of time after the civil court passed the judgment for vacating the property.

Mr. Prasun Kumar Datta, learned advocate appearing for the State produces the case diary and draws the attention of the Court to the statement of the witnesses which are available and submits that so far as the statement of the witnesses are concerned they do satisfy the requirements of the provisions of Section 498A of the Indian Penal Code, as the statement of the complainant do reflect that there was a demand of dowry and for the said purpose, there was physical and mental torture being inflicted upon her. According to State, the requirements in invoking the provisions of Section 156(3) of the Code of Criminal Procedure was satisfied as the lady Punam Sharma did not get any remedy after the complaint made with the Inspector-in-Charge, Uttarpara Police Station as well as Commissioner of Police, Chandannagar.

I have considered the submissions of the rival parties as also accounted the series of events which are related to the present case. The present case was initiated or registered with Uttarpara Police Station on 29.06.2018 pursuant to the order passed by the learned ACJM, Serampore. The allegations amongst others referred to incident of 10.06.2018. The learned Civil Judge (Junior Division), 1<sup>st</sup> Court,

Serampore, Hooghly in Title Suit No.218 of 2015 by its judgment on March 18, 2017 was pleased to pass the following order:

“The defendant being a licensee in the suit scheduled premises is hereby directed to quit and vacate the suit scheduled premises within a period of 45 days from the date of this judgment and decree and hand over peaceful and vacant possession of the same to the plaintiff. In default, the plaintiff will be at liberty to institute execution proceedings of this judgment and decree.”

The husband of the complainant preferred an appeal being Title Appeal No.53 of 2017 and the learned Additional District Judge, Second Court, Serampore, Hooghly by its judgment dated 21.06.2018 was pleased to dismiss the appeal observing as follows:

“that the appeal be and the same is dismissed on contest with costs. The Judgment dated 18.03.2017 and the decree dated 27.03.2017 passed by the Ld. Civil Judge (Jr. Division) 1<sup>st</sup> Court, Serampore, Hooghly are hereby affirmed. The appellant/defendant is directed to quit and vacate the suit property within two (2) months hereof i.d. the plaintiff/respondent will be at liberty to put the decree into execution.”

The application under Section 156(3) of the Code of Criminal Procedure reflects that the same was affirmed on 27<sup>th</sup> June, 2018. Thus, the provisions of the criminal court were invoked immediately after the appeal court affirmed the order of the civil court with a direction to vacate the suit scheduled premises.

In this case, the following circumstances emerge:

- (a) The marriage was solemnised in the year 1996.
- (b) An application under Section 156(3) of the Code of Criminal Procedure was filed before the jurisdictional court on or about 27<sup>th</sup> June, 2018. The contents of the application under Section 156(3) of the Code of Criminal Procedure reflects that the instant complaint regarding torture is of 10<sup>th</sup> June, 2018 and the accused persons who have been inflicted are in-laws of the matrimonial home.
- (c) Surprisingly, in this case, the husband has not made an accused but a witness to support the claim of the wife.
- (d) The period of time after which such application under Section 156(3) of the Code of Criminal Procedure has been filed for invoking the alleged offence under Section 498A of the Indian Penal Code is of 22 years. The Civil Judge (Junior Division)

passed its judgment on March 18, 2017 and the same was affirmed by the appellate court on 21<sup>st</sup> June, 2018.

Having considered the series of events which has taken place, I am of the view that the petitioner has been able to make out a case for interference, as it is a settled proposition of law that where a criminal case has been instituted with an ulterior motive for wrecking vengeance for private and personal grudge, such proceedings are liable to be quashed as held in Clause VII paragraph 102 **of State of Haryana Vs. Bhjanlal** reported in **1992 SCC (Cri) 426**.

In view of the observations made above, all further proceedings of Uttarpara Police Station Case No.475 of 2018 dated 29.06.2018 corresponding to G.R. No.1429 of 2018 pending before the learned Judicial Magistrate, 2<sup>nd</sup> Court, Serampore, Hooghly including the charge-sheet filed therein and all subsequent orders are hereby quashed.

Thus, CRR 2641 of 2021 is allowed.

Pending application, if any, is consequently disposed of.

Case diary be returned to Mr. Prasun Kumar Datta, learned advocate appearing for the State.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

**(Tirthankar Ghosh, J.)**