

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3379 of 2019

Asif Salim

Vs

The State of West Bengal & Anr.

For the Petitioners : Mr. Shyamal Mukhopadhyay,
Ms. Priyanka Chatterjee.

For the State : Mr. Ashok Das.

For the Opposite Party no.2 : None.

Heard on : 16.12.2022

Judgment on : 10.01.2023

Shampa Dutt (Paul), J.:

The revision has been filed praying for quashing of criminal proceeding being GR Case No. 9422 of 2014 arising out of Shibpur Police Station, Case No. 727 of 2014 dated 18.12.2014 under Sections 498A/188 of the Indian Penal Code along with the charge sheet being No. 7 of 2015 dated 28.01.2015 under Sections 498A/188 of the Indian Penal Code, 1861 now pending before the Learned Judicial Magistrate, 5th Court, Howrah.

The petitioner's case is that he is a central government employee and got married with the opposite party No. 2 in 12.06.2010. After marriage the accused and the opposite party No. 2 used to live and reside at the address of the accused given in the cause title. But as the opposite party No. 2/wife was arrogant in nature and disliked to live and reside in a joint mess and family of the petitioner/accused, the petitioner after their honeymoon, took the opposite party No. 2 to his quarter at Block – GN/33, Bidhannagar, Salt Lake, Kolkata – 700091 allotted by his employer and started living there.

The opposite party No. 2 became pregnant and on 14.10.2010 she left the quarter with her mother with all belongings without informing the petitioner/accused. The opposite party No. 2 gave birth of a male child, named, Shajeb Asif on 17.04.2011.

Inspite of the petitioner's best effort the opposite party No. 2 did not return even after filing a case for restitution of conjugal rights and efforts for reconciliation.

The opposite party left the petitioner's house in 2010, but filed the present case in 2014. She is a school teacher by profession. On 28.01.2015, the investigation ended in charge sheet for offence under Sections 498A/188 IPC without any cogent documents. The complaint dated 01.12.2014 has no force and continuance of the aforesaid GR case No. 9411 of 2014 arising out of Shibpur Police Station Case No. 727 of 2014 dated 18.12.2014 under Sections 498A /188 of the Indian Penal Code, 1861 now pending before the Learned 5th Judicial Magistrate at Howrah is nothing but abuse of process of law.

The petitioner states that the investigating officer willfully failed and deliberately neglected to consider the documents submitted by the petitioner and filed the charge sheet arbitrarily without investigating the case and/or matter properly.

The entire proceeding is totally bad and gross abuse of process of law, harassing and motivated and as such the entire proceeding should be quashed.

That the Hon'ble Court should invoke its inherent power under Section 482 of the Code of Criminal Procedure and quash and /or set aside the impugned proceeding against the petitioner.

Hence this revision.

Mr. Shyamal Mukhopadhyay Learned Counsel for the petitioner has submitted that the initiation and continuation of the impugned proceeding against the petitioner has amounted to an abuse of process of law.

The Learned Magistrate committed error in law and procedure in taking cognizance against the petitioner on the basis of the charge sheet without considering the materials in the case diary.

The Learned Magistrate ought to have appreciated that when the opposite party deliberately failed and willfully neglected to comply with the order dated 27.02.2013 passed by the Learned 3rd Additional District Judge in Mat. Suit No. 822 of 2011 even after receiving the request letter dated 18.03.2013 written by the petitioner, the complaint was lodged in a preplanned method, to avoid residing with the petitioner.

The impugned order passed by the Learned Magistrate taking cognizance of the charge sheet is otherwise bad in law and liable to be set aside and/or quashed along with the proceedings against the petitioner.

Mr. Ashok Das, Learned counsel for the State has submitted that the charge sheet has been filed on proper investigation and on

there being evidence of a prima facie case of a cognizable offence against the petitioner. The revision is thus liable to be dismissed.

In spite of due service, the opposite party no. 2 has chosen not to appear.

In a case of such nature, the High Court can quash the proceedings if the Court is convinced that the person is innocent and falsely implicated. It can also be done if the ingredients of the offence alleged is not proved (even prima facie).

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.”*

The Supreme Court in **M/s Neeharika Infrastructure Vs. The State of Maharashtra (on 13 April, 2021), in Criminal Appeal No. 330 of 2021**, citing several precedents held :-

“ * * * * *

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

vi) Criminal proceedings ought not to be scuttled at the initial stage;

ix) The functions of the judiciary and the police are complementary, not overlapping;

*xiii) The power under **Section 482** Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;*

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

* * * * *

In Ranveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr., Special Leave petition (CRL.) No. 2953 of 2022, the Supreme Court held :-

*“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under **Section 482** of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under **Section 482** of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. **Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.**”*

In **Umesh Kumar Vs State of Andhra Pradesh and Anr.**

(Supra) the Supreme Court **also** held :-

“20. The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised ex debito justitiae. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of

sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial. (Vide Pepsi Foods Ltd. v. Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128] , Ashok Chaturvedi v. Shitul H. Chanchani [(1998) 7 SCC 698 : 1998 SCC (Cri) 1704 : AIR 1998 SC 2796] , G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] and Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy [(2011) 12 SCC 437 : (2012) 1 SCC (Cri) 603] .)

21. In Rajiv Thapar v. Madan Lal Kapoor [(2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] this Court while dealing with the issue held as follows : (SCC p. 348, para 30)

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised

by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

30.1. Step one: Whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: Whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: Whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?"

22. In State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] this Court dealt with an issue of whether an application under Section 482 CrPC for quashing the charge-sheet should be entertained before cognizance is taken by a criminal court and held as under : (SCC pp. 269-70, para 68)

“68. ... Quashing the charge-sheet even before cognizance is taken by a criminal court amounts to ‘killing a stillborn child’. Till the criminal court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial amounts to pre-trial of a criminal trial.... It is not to suggest that under no circumstances a writ petition should be entertained. ... The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent court. It is not the case that no offence has been made out in the charge-sheets and the first information report.”

(emphasis supplied)

23. *The issue of mala fides loses its significance if there is a substance in the allegation made in the complaint moved with malice. In Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82 : AIR 1987 SC 877] this Court held as under : (SCC p. 318, para 16)*

“16. ... It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant.”

24. In *Parkash Singh Badal v. State of Punjab* [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193 : AIR 2007 SC 1274] this Court held as under : (SCC p. 43, para 74)

“74. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained.”

25. In *State of A.P. v. Golconda Linga Swamy* [(2004) 6 SCC 522 : 2004 SCC (Cri) 1805 : AIR 2004 SC 3967] this Court held as under : (SCC p. 529, para 8)

“8. ... It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.”

(See also *K. Karunakaran v. State of Kerala* [(2007) 1 SCC 59 : (2007) 1 SCC (Cri) 251] .)

26. Thus, in view of the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal.

27. *The scheme for inquiry/trial provided under CrPC is quite clear. After investigation, report under Section 173(2) CrPC is to be submitted before the competent court i.e. the Magistrate having jurisdiction in the matter and the Magistrate may take cognizance under Section 190 CrPC. However, it is still open to the Magistrate to direct further investigation under the provisions of Section 173(8) CrPC. If the case is triable by the Court of Session, the Magistrate would commit the case to the said court under Section 209 CrPC. **It is for the court to examine whether there is sufficient material collected during investigation and filed along with the charge-sheet that a prima facie view can be taken to proceed against the accused** and in view thereof, frame charges under Section 228 CrPC. At this stage the remedy available to the accused is to ask for discharge under Section 227 CrPC. In case charges are framed the accused has to face the trial, charges can be added/alterd at any stage of the trial, before the pronouncement of the judgment to suit the evidence adduced before the court, under the provisions of Section 216 CrPC. The only legal requirement is that a witness has to be recalled as provided under Section 217 CrPC when a charge is altered or added by the court.”*

In the instant case, charge-sheet has been filed and cognizance has been taken by the Magistrate concerned; the committal proceedings have not yet taken place. Thereafter the trial shall commence.

The Supreme Court in State of Maharashtra vs. Salman Salim

Khan (2004) 1 SCC-525, also held:-

“12.....In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial.....”

The Marriage in the present case took place on 12.06.2010. The opposite party No. 2 left the petitioner's house on 14.01.2010 after she got pregnant and filed the present case on 18.12.2014, four years after she left.

The opposite party no. 2/wife has alleged offence under Sections 498A/188 IPC.

Section 188 IPC, lays down:-

“188. Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction;

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any

person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ingredients of offence.— *The essential ingredients of the offence under Sec. 188 are as follows:-*

- (1) There was promulgation of an order.*
- (2) Such Promulgation was made by a public servant.*
- (3) Public servant was legally empowered to make the promulgation.*
- (4) Promulgation directed not to do certain things or to take certain orders in connection with certain property in his possession or management.*
- (5) Accused knew of the promulgation;*
- (6) Accused disobeyed it;*
- (7) Such disobedience caused or tended to cause obstruction, annoyance, injury, or risk of the same to a person lawfully employed, or caused or tendered to cause danger to human life, health or safety or a riot or affray.”*

In this case the Learned Additional District Judge, 3rd Court, Howrah was pleased to direct the petitioner to take his wife and child to his house and lead a conjugal life in a case for restitution of conjugal rights filed by the petitioner. It is the opposite party no. 2 who has not complied with the said order as the petitioner sent a letter dated 18.03.2013 by Regd. Post with AD requested her to come back with the

child. But she did not come back. The service upon the opposite party no. 2/wife had been returned with the endorsement 'left'.

This further strengthens the case of the petitioner that she is unwilling to return and has filed this case only to harass the petitioner so that she is not forced to return.

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 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.

The Charge Sheet and the evidence placed in support thereof, form the base to take or refuse to take cognizance by the competent court.

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

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.

Accordingly, **CRR 3379 of 2019 is allowed.**

The proceedings being in Criminal Proceeding being GR Case No. 9422 of 2014 arising out of Shibpur Police Station Case No. 727 of 2014

dated 18.12.2014 under Sections 498A/188 of the Indian Penal Code along with charge sheet vide charge sheet no. 7 of 2015 dated 28.01.2015 under Sections 498A/188 of the Indian Penal Code, 1861 now pending before the learned Judicial Magistrate, 5th Court, Howrah, is hereby quashed.

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 Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)