

**IN THE HIGH COURT AT CALCUTTA**  
**Criminal Revisional Jurisdiction**  
**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 3652 of 2019**

**Kalipada Sardar & Ors.**

**Vs.**

**The State of West Bengal & Anr.**

**For the Petitioners** : Mr. Soubhik Mitter.

**For the State** : Mrs. Ratna Ghosh.

**For the Opposite Party No. 2** : Mr. Debasish Kar.

**Heard on** : 19.06.2023

**Judgment on** : 07.07.2023

**Shampa Dutt (Paul), J.:**

1. The present revision has been preferred praying for quashing of proceedings being G.R. Case No. 2969/18 arising out of Nimta Police Station Case No. 206/18 dated 01.06.2018 under Sections 498A/341/323/506/34/120B of the Indian Penal Code pending before the Learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas and all order passed therein and quashing of proceedings being A.C.G.R. Case No. 3987/18 arising out of Regent Park Police Station Case No. 202/18 dated 14.08.2018 under Sections 498A/323/34 of the

Indian Penal Code pending before the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas and all order passed therein.

2. The petitioners' case is that the petitioners herein are the in-laws of the defacto complainant, namely, Soma Sardar. Petitioner no. 1 is an old man aged about 64 years. Petitioner nos. 2 and 3 are the wife and son of petitioner no. 1. Petitioner no. 4 is the widow of one of the brothers of petitioner no. 1. Petitioner nos. 5 and 6 are her children. Petitioner no. 7 is the brother of petitioner no. 1. Petitioner no. 8 is the former's wife.
3. That the opposite party no. 2 in the instant case, is an abuser of law and is using and abusing the various legal provisions by initiating false and frivolous cases against the petitioners, according to her own whims and fancies.
4. The instant case germinates out of previous disputes between the parties regarding the **partition of the ancestral property**.
5. In the month of March, 2018, the husband of the defacto complainant, namely, Prasanta Sardar had filed an application under Section 144 of the Code of Criminal Procedure being M.P. Case No. 789/18 before the Court of the Learned Executive Magistrate, 1<sup>st</sup> Court, Alipore, South 24 Parganas, inter alia alleging that the petitioner nos. 1, 3, 4, 6, 7 and 8 were creating disturbances by attempting to dispose, encroach, and by undertaking illegal construction within the scheduled undivided property.
6. On an order passed by the Learned Executive Magistrate, the Sub-Inspector of Regent Park Police Station, had sent a written intimation

dated 18.03.2018 to the aforesaid petitioners, thereby requesting all parties to maintain peace in respect of the scheduled premises.

7. The petitioners however, in order to put forth the actual truth had made a written representation, to the Officer-in-Charge, Regent Park Police Station, inter alia bringing on record that the facts narrated by Prasanta Sardar were cloaked with malice and ought not to have been believed. The true set of facts was that the safety tank in the scheduled premise had been damaged and needed urgent repair. The same was resulting into outflow of dirty sewage water, thereby causing annoyance to the neighbours, resulting in continuous complaints and further encouraging the possibility of several diseases and health concerns.
8. In order to address the issue, the petitioners were desirous of carrying out the much needed repair work. However, the opposite party no. 2 herein and her husband, hindered such repair work and would not let the petitioners carry out the same. They continued to cause breach of peace within the family and their primary demand was partition of the scheduled property.
9. That from time to time, the opposite party no. 2, her husband and daughter continued to cause annoyance in the family for having their unjustified demand met.
10. That the opposite party no. 2, in collusion and in connivance with her husband and daughter, filed a vexatious complaint under Section 156(3) of the Code of Criminal Procedure, against the petitioners herein in order to wreck vengeance upon them being M.P. Case No. 974/18 dated 31.05.2018.

11. The Learned Additional Chief Judicial Magistrate, Barrackpore, vide order dated 31.05.2018, was pleased to order the Officer-in-Charge of Nimta Police Station to treat the same as first information report and to take steps accordingly. As such, **Nimta Police Station Case No. 206/18** dated 01.06.2018 came to be registered against the petitioners herein **under Sections 498A/341/323/506/34/120B of the Indian Penal Code.**
12. The facts of the case as alleged by opposite party no. 2 in Nimta Police Station Case No. 206/18 dated 01.06.2018 are to the effect that the opposite party no. 2 got married to Prasanta Sardar in the year **1991** as per Hindu rites and customs. However, since after marriage, her in-laws subjected her to mental and physical cruelty. They committed torture upon her husband as well. They were also denied a share in the family property, primarily because she gave birth to female children and had no sons.
13. On the basis of the aforesaid malicious written complaint, the investigating agency conducted investigation thereby culminating into the submission of charge sheet being charge sheet no. 383/18 dated 31.10.2018 under Sections 498A/341/323/506/34/120B of the Indian Penal Code against the petitioners herein.
14. After the initiation of Nimta Police Station Case No. 206/18 dated 01.06.2018, the opposite party no. 2 herein lodged yet another written complaint on the same set of facts against the same accused persons, before the Officer-in-Charge, Regent Park Police Station. The same came

to be registered as **Regent Park Police Station Case No. 202/18 dated 14.08.2018 under Sections 498A/323/34 of the Indian Penal Code.**

15. The petitioners state that the case of the defacto complainant in Regent Park Police Station Case No. 202/18 dated 14.08.2018 is identical to that of the case instituted under Nimta Police Station. It has been alleged in this case that sometime before 14.08.2018, the accused persons, being the petitioners herein, subjected the de facto complainant to mental and physical cruelty. They even abused and assaulted her husband since she had given birth to female children.
16. On the basis of such frivolous complaint, the investigating agency have submitted charge sheet in connection with the aforesaid case, being charge sheet no. 196/18 dated 23.11.2018 under Sections 498A/323/34 of the Indian Penal Code, against the petitioners herein.
17. The petitioners state that the impugned proceedings are bad in law inasmuch as any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard had already been started and concluded by submission of charge sheet and a further complaint against the same accused persons shall only amount to an improvement on the facts mentioned in the original complaint, which is otherwise prohibited under Section 162 of the Code.
18. It is submitted that the impugned proceedings be quashed since the same is being used by the opposite parties as a weapon of harassment or persecution and hence continuation of the said proceedings amounts to abuse of process of law and the same is liable to be quashed.

19. That the allegations made in the complaints even if it is taken at its face value and accepted in entirety, do not prima facie constitute any offence or make out a case against the petitioners and hence continuation of the said proceedings amounts to abuse of process of law and the same is liable to be quashed.
20. **Mr. Debasish Kar, learned counsel for the opposite party no. 2** has submitted that the proceedings before the trial Court is in accordance with law and as such the present revision is liable to be dismissed.
21. **Ms. Ratna Ghosh, learned counsel for the State** has placed the case diaries relating to the two cases under revision.
22. **From the materials on record the following facts are before this Court:-**
- (i) Nimta P.S. Case filed on 01.06.2018 is under Sections 498A/341/323/506/34 of the Indian Penal Code.
  - (ii) Regent Park P.S. Case filed on 14.08.2018 is under Sections 498A/323/34 of the Indian Penal Code.
  - (iii) The complainant in both the cases is Soma Sardar, the opposite party no. 2 herein.
  - (iv) The said cases have been filed only against her in-laws and not her husband on similar facts and allegations within a span of two and a half months.
  - (v) The marriage of the complainant took place in the year 1991.
  - (vi) The present cases have been filed in the year 2018.

- (vii) From the written complaints/complaint petitions, it appears that the complainant and her husband have been demanding partition of the family property as she apprehends that they may be deprived, having only daughters. The total dispute centers around their property. As such, the parties have been facing continuous disturbance relating to their family property.
- (viii) The ingredients of the offences in both cases are based on similar facts. Doctrine of double Jeopardy is enshrined in Section 300 Cr.P.C. and Section 26 of the General Clauses Act. Both the provisions employ the expression “same offence” ***(Sangeetaben Mahendrabhai Patel vs State of Gujarat & Anr., on 23.04.2012 in Criminal Appeal No. 645 of 2012).***

23. **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.”*

24. 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 grandmothers 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.”*

25. **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.....”*

26. The Marriage in the present case took place in the year 1991. The present cases have been filed after 18 years. Prior to that the complainant and her family resided elsewhere and admitted that there is a property dispute between the parties for partition.

27. It is seen that the materials in the case diaries and the charge sheets there in do not prima facie make out a case of cognizable offence against the accused persons/petitioners and there is no materials for proceeding against the accused persons/petitioners towards trial and this is a fit case where the inherent power of the court should be exercised.

28. In the Present cases 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 and two cases on similar facts have been filed, as such the proceedings in these cases should be quashed.

29. **The revisional application being CRR 3652 of 2019 is accordingly allowed.**

30. The impugned proceeding being G.R. Case No. 2969/18 arising out of Nimta Police Station Case No. 206/18 dated 01.06.2018 under Sections 498A/341/323/506/34/120B of the Indian Penal Code pending before the Learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas and all order passed therein and the proceedings being A.C.G.R. Case No. 3987/18 arising out of Regent Park Police Station Case No. 202/18 dated 14.08.2018 under Sections 498A/323/34 of the Indian Penal Code pending before the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas and all order passed therein, are quashed.
31. No order as to costs.
32. All connected applications, if any, stands disposed of.
33. Interim order, if any, stands vacated.
34. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
35. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

**(Shampa Dutt (Paul), J.)**