

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.R No. 3658 of 2016

Somnath Das @ Samir @ Ors.

Vs.

State of West Bengal & Anr.

For the Petitioners

: Mr. Sanjib Kumar Mukhopadhyay,
: Mr. Nilanjan Adhikari,
: Ms. Nargish Parveen.

For the OP

: Mr. Amarta Ghosh,
: Ms. Rituparna De Ghosh,
: Mr. Sujan Chatterjee.

For the State

: Mr. Narayan Prasad Agarwala,
: Mr. Pratick Bose.

Hearing concluded on: 08/12/2022

Judgment on: 01/03/2023

Rai Chattopadhyay, J.

1. Petitioners are the husband and other matrimonial relations (in seriatim) of opposite party no.2/complainant. They have been aggrieved basically with the complaint dated August 29, 2015, filed by the opposite party no.2 and specifically with respect to the order of the trial Court dated August 10, 2016.

2. The opposite party no.2/wife of petitioner no.1 filed a complaint case in the Court of Additional Chief Judicial Magistrate at Kalna, Burdwan on August 29, 2015 being C.R Case No. 189 of 2015. The case was filed against all the six petitioners in this case. Allegations made out in the said complaint case by the present opposite party no.2 may be summarised as herein below:

Marriage was solemnised between the petitioner and opposite party no.2 on November 23, 2005 pursuant to which opposite party no.2 started living in her matrimonial house. There, she says that she has been subjected to immense mental torture and narrated incidence like the petitioner no.1/husband living separately from her in some other place, leaving the newly wed bride to stay alone amongst the lesser known in-laws, the in-laws including the married sister-in-law demanded money and pressurised her and subjected her to abusive languages and humiliation to schlenter the money out from her parents, also that the petitioner no.1 being the husband has inflicted torture on demand of more dowry. She has further stated that at the time of marriage her father gifted her various valuable properties which are her “Stree-Dhan” properties, though, allegedly the petitioners have deprived her from the enjoyment thereof. She has further stated that dowry in the form of various valuable gifts and cash amount of money were also provided to the petitioner and his family members. In her said complaint she has stated that due to the severe torture and unbearable situation created by the petitioners in her matrimonial home, she was forced to leave her matrimonial home and have

been virtually living separate from the petitioners including petitioner no.1 with effect from July, 2006. The further specific allegation of the complainant/opposite party no.2 made in the said complaint is that the various “Stree-Dhan” properties (enlisted in the complaint) have not been returned to him of which only she is the lawful owner and thus the petitioners have been alleged with the offence under Sections 498A, 406, 506 and 34 IPC.

3. In the trial Court the complainant was examined under Section 200 Cr.P.C, 1973, and on the basis of the same summons was issued to the present petitioners. Petitioners appeared in the Court and were granted bail. Later on the petitioners preferred to file their prayer for discharge. The said prayer were disposed of the trial Court vide order dated August 10, 2016, thereby rejecting petitioners prayer for discharge. Being aggrieved by and dissatisfied with the same and with the very initiation of the criminal proceeding against them, by the trial Court taking cognizance of the offence alleged against them and by issuance of summons to them to appear in the Court in the said trial as accused persons, the petitioners have moved this Court in this case with the prayer to invoke provisions under Section 482 Cr.P.C, 1973, and in exercise of the extraordinary jurisdiction vested in it by law, to quash the said proceeding in its entirety.

4. Mr. Sanjib Kumar Mukhopadhyay appearing for the petitioner has very elaborately and candidly submitted that the present case against the petitioners is only an outcome of malice and vengeance by the complainant/wife, who has not ever been successful in her several earlier

endeavours to victimise the petitioners. He says that there would be no sufficient material in this case against the petitioners to proceed against them and the proceedings now pending in the trial Court against his client is only a gross abuse of the process of the Court.

5. The first point argued by Mr. Mukhopadhyay is that of suppression of very material facts by the complainant/wife. It is submitted that the wife has voluntarily left her matrimonial home much before the date of filing of the instant complaint. He further submits that the fact that the Court of law in a proceeding under Section 125 Cr.P.C, 1973 have already categorically held the fact of voluntarily departure of the wife from her matrimonial home, is a very relevant fact to maintain any criminal prosecution for an offence under Section 498A against the petitioners, which the complainant has intentionally suppressed in the trial Court. Mr. Mukhopadhyay says that in such view of the fact the present complaint would be only unfounded. On this Mr. Mukhopadhyay has relied on three decisions of the Hon'ble Supreme Court:-

(i) S.P. Chengalvaraya Naidu (Dead) By LRS. Vs. Jagannath (Dead) by LRS. & Ors. reported in (1994) 1 SCC 1,

(ii) Hamza Haji vs. State of Kerala & Anr. reported in (2006) 7 SCC 416

(iii) Dalip Singh vs. State of Uttar Pradesh reported in (2010) 2 SCC 11.

6. It is submitted further that in the said complaint the complainant/opposite party no.2/wife has also suppressed about pendency of two suits between the parties, i.e, firstly, a Title Suit No. 67/2008, pending in the Court of Civil Judge, Senior Division, Kalna, Burdwan and

secondly, Matrimonial Suit No. 152/2008 pending in the Court of Additional District Judge, 1st Court at Chincura, Hooghly. It is stated that the Title Suit is pending claiming return of the money of an amount of Rs. 1,00,000/- from the father of the complainant to the petitioner which her father took earlier from the petitioner but later on denied to pay back. It is further submitted that the Matrimonial Suit No. 152 of 2008 was preferred by the petitioner no. 1 seeking dissolution of his marriage with the complainant/opposite party no. 2 by a decree of divorce.

7. In the interregnum, a proceeding initiated by the complainant in an appropriate Court under Section 125 Cr.P.C, 1973 for maintenance has also been dismissed by the said Court on the ground that the wife could not prove satisfactorily as to her vagrancy and indigence, instead it was proved that she has voluntarily left her matrimonial home. Mr. Mukhopadhyay submits that all these facts are very relevant for the trial Court before taking cognizance of the complaint as above lodged by the complainant/wife against the present petitioners, which the trial Court has failed to take note of or rather were suppressed from the trial Court. Accordingly the complaint is a sum-total of fraudulent misrepresentations to warrant only its rejection. It is submitted that the order of the Magistrate was confirmed in a revision decided by the Ld. Additional District & Sessions Judge, 2nd Court, at Chincurah, Hooghly.

8. The other point categorically argued by Mr. Mukhopadhyay is that of belated filing of the complaint. It is submitted that the marriage between the parties took place on November 23, 2005, whereas the

complainant left her matrimonial home on July, 2006. Since thereafter the complainant sat tight and has not come up with any allegation of torture etc. Only in the year 2015 she came up to file the present complaint on August 29, 2015, without any explanation as to the reason of delay in filing the instant complaint. Hence, due to the delay unexplained this complaint would be liable to be rejected at the threshold. On this Mr. Mukhopadhyay has relied on the following judgments of the Hon'ble Supreme Court

(i) Kishan Singh (Dead) through LRS vs. Gurpal Singh & ors. reported in AIR 2010 SC 3624,

(ii) Robert John D'Souza & Ors. vs. Stephen V. Gomes & Anr. reported in (2015) 9 SCC 96

(iii) Suresh vs. Mahadevappa Shivappa Danannava & Anr. reported in (2005) 3 SCC 670.

9. Mr. Mukhopadhyay for the petitioner has further submitted that the crux of the dispute between the parties is mainly due to the alleged non-payment of the amount of Rs. 1,00,000/- taken by the father of the complainant from the present petitioner no. 1. According to him the nature of dispute between the parties is only civil and there is no scope for the criminal justice system to reign between the parties in the facts and circumstances. He has relied on the following judgments of the Hon'ble Supreme Court on this aspect :-

(i) Robert John D'Souza & Ors. vs. Stephen V. Gomes & Anr. reported in (2015) 9 SCC 96

(ii) Madhavrao Jiwajirao Scindia & ors. vs. Sambhajirao Chandrojirao Angre & Ors. reported in (1988) 1 SCC 692

(iii) State of Haryana & Ors. vs. Bhajan Lal & ors. reported in AIR 1992 SC 604.

10. Lastly, Mr. Mukhopadhyay submitted that the petitioner no. 2 who is the mother of petitioner no. 1 is an octogenarian person, whereas the petitioner no. 3 is a resident of a different state in India, i.e, Chhattisgarh and the petitioner no. 4 is a resident of Balurghat, at South Dinajpur. Accordingly these petitioners had not and could not contribute to the alleged offence due to their lack of proximity to the matrimonial abode of the parties. He says that they could not have played any role and allegations against them are only after thought and frivolous. On this Mr. Mukhopadhyay has relied on the judgment of the Hon'ble Supreme Court **Preeti Gupta & Anr. Vs. State of Jharkhand & Anr.** reported in **AIR 2010 SC 3363**.

11. Further he says that the statements made in the complaint even if are taken at their face value and accepted in entirety, would not prima facie constitute any offence or make out any prosecutable case against the present petitioners, no prudent person could reach on the basis of the same to a conclusion that there is sufficient ground to proceed against the accused person and the entire proceeding is only malicious and malafide. By referring to the judgments of the Hon'ble Supreme Court, i.e, **(i) Robert John D'Souza & Ors. vs. Stephen V. Gomes & Anr. reported in (2015) 9 SCC 96 (ii) Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors. reported in (2007) 12 SCC 1.** Mr. Mukhopadhyay has submitted that to proceed against the present petitioners under the circumstances as he argued and mentioned above, would render gross abuse of process of law. He has prayed for quashing of the entire criminal proceeding.

12. Mr. Ghosh has defended the complaint and the entire proceedings pursuant to that complaint, on behalf of his client, i.e, opposite party no.2.

13. His first submission would be that the offence alleged against the petitioners is a continuing offence and the point of belated filing of the complaint as raised by the petitioners in this case would not render the right of the complainant nugatory, in so far as the complainant has been able to successfully put forward sufficient material against the petitioners in support of the alleged facts and circumstances. He says that the complaint is enough elaborate as regards the mode and manner in which the present petitioners have inflicted torture upon her during her matrimonial life and thus according to him the trial Court has directed itself rightly in assessing and weighing the credibility of the statements made in the complaint and the prima facie case made out against the present petitioners from there.

14. Secondly, Mr. Ghosh would submit that in view of the prima facie offence being made out against the petitioners in the complaint the only course of action left upon to the trial Court is to issue a process to the accused persons under Section 204 Cr.P.C, 1973. He says that after examination of complainant under Section 200 Cr.P.C, 1973, and finding prima facie material against the petitioners/accused persons the provisions under Section 203 Cr.P.C, 1973 would not have come into play in this case.

15. Mr. Ghosh would refer to the document, i.e, petitioner's application, filed in the trial Court, to submit that the same is improper and

erroneous. He says that petitioner's prayer in the same is more of a nature under Section 203 Cr.P.C, 1973, than that under Section 227 Cr.P.C, 1973.

16. Mr. Ghosh has emphasised in his arguments, that the present case of the petitioners is not based on sufficient grounds to warrant this Court's interference, in exercise of its inherent power, hence may be dismissed.

17. In this case, this Court is invited to invoke its extraordinary and inherent jurisdiction under the provisions of section 482 CrPC, which this Court is empowered to exercise to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In several judicial pronouncements the constitutional Courts including the Apex Court of the country has elaborated and enumerated regarding an appropriate situation as to when and in what manner this Court can exercise its inherent jurisdiction as above. A cult classic decision in this regard, of the Apex Court is that reported in **AIR 1992 Supreme Court 604 (State of Haryana versus Bhajanlal)**, the relevant portion of which may be extracted below:

"This Court in the backdrop of interpretation of various relevant provisions of CrPC 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 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice. Thus, this Court made it clear that 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 to myriad kinds of cases wherein such power should be exercised : (SCC pp. 378-79, para 102)

"102. (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.”

18. For further reference another judgment of the Supreme Court reported in (2007) 12 Supreme Court cases 1 (Inder Mohan Goswami versus State of Uttaranchal and others) may be mentioned. There the Hon’ble Apex Court has been pleased to hold as follows:

“24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the Court,

then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.”

19. Thus it is now very well settled that the power vested on this Court under section 482 CrPC is amply wide, to exercise discretion and interfere in to the criminal proceeding which has been initiated not considering the fact that the complainant has not disclosed any prima facie ingredient of offence against the accused persons and that the complaint has not made out, against them, a prosecutable case. It is also within the power of this Court while exercising jurisdiction under section 482 CrPC to interfere with the criminal proceeding which might have been initiated due to malice or for satisfaction of private and personal grudge and vengeance against the accused persons. In that event this Court will find the proceedings to be an abuse of the process of Court. However it has also been mandated that such an wide power should have to be exercised sparingly, carefully and with great caution and only then if such exercise is justified by applying the tests specifically laid down in the concerned provision of law under which the accused persons are booked.

20. Following these broad guidelines, this Court would now consider whether in this case the criminal proceeding against the present petitioners as initiated by the opposite party No.2 under sections 498A, 406, 506 and 34 of the Indian Penal Code should be maintainable or not.

21. On the basis of the rival submissions of the parties the following points may be determined upon which the decision of this Court in this case may be founded:

i. whether the offence alleged against the petitioners is a continuing offence or the complaint should suffer presumption of being an after thought one, on the ground of delay in filing of the same;

ii. whether the ingredients of offence under section 498A IPC against the petitioners are prima facie available;

iii. whether the ingredients of offence under section 406 IPC against the petitioners are prima facie available;

iv. whether that under section 506 IPC against the petitioners are available or not;

v. whether the complaint suffers from suppression of material facts in order to mislead the Court regarding the genuinity of the allegations made therein;

vi. whether the complaint is a result of malice of the complainant and for the purpose of wreaking personal vendetta and / or vengeance against the petitioners so as to raise doubt about its credibility and maintainability.

22. Continuing offence means a transaction, or a series of acts set on foot by a single impulse, and operated by an unintermittent force, no matter how long a time it may occupy. In simple terms, continuing offence is an offence which remains continued over a span of time. The Courts of the Land, have time and again held that the offence under Section 498A of the Indian Penal Code, 1860, is a continuing offence and if the act of cruelty continues even while the woman is living at her parent's house, the offence will be considered to have been continued during that period of time also.

23. Section 498A under Chapter XXA of the Indian penal code has come into operation with effect from December 25, 1983. The said provision is for redressing cruelty upon a woman by her husband or relatives of her husband. The same may be extracted as herein below:

“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 such demand.”

24. Thus law provides that in case the husband or his relatives subject any woman to cruelty shall be punishable under the said provision of law. As to what should be construed to be ‘cruelty’ within the meaning of the said provision, the ‘explanation’, appended to the section has made it clear. It may be stated that any wilful action of the perpetrators which is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb or mental or physical health would be an act of ‘cruelty’. Also her harassment or coercion by the said persons to meet any unlawful demand for any property or valuable security, which she is unable to meet with, would be an act of ‘cruelty’ within the meaning of this section.

25. After careful consideration of the complaint, it appears that the complainant has alleged of infliction of torture, cruelty and unbecoming

behavior by the present petitioners towards her after her marriage and when she was living in her matrimonial home. The fact as stated by the petitioners that the complainant has not been living in her matrimonial home since after July 2006, is not controverted seriously in this case. That being so, any unlawful action of the petitioners sufficient enough to drive the complainant either to commit suicide or to cause injury to her mental or physical health after a prolonged period of about 10 years from their living separate appears to be farfetched. It is worth noting that in the complaint, which is a long one, running through several pages, the complainant has not mentioned about an incident of torture which might have driven her to the extreme of committing suicide et cetera. This Court is constrained to find that mere allegation of torture or demand of dowry and further torture upon her for non-fulfillment of such a demand - would not, on its own, constitute an offence under section 498A of Indian Penal Code, unless it is shown, at least, prima facie that, such cruelty or unlawful demand has pushed her to her limits.

26. Contrarily, during all this period, the complainant has been very conscious about her rights in her matrimonial life. She has moved the Court with her prayer for maintenance, though denied by the Court and also with her prayer for recovery of the streedhan properties. She has been fighting her husband's case for divorce. It is not her case even, that any event subsequent to her leaving her matrimonial home has added to her plight as a cruelty trodden wife of the petitioner No.1. On the contrary the complaint itself would sufficiently reveal, which has rightly been pointed out

on behalf of the petitioners, that, the complainant has simply avoided to mention any development or incident post her leaving her matrimonial home. Since this Court in exercise of its power under section 482 CRPC is also to look into the fact whether the complaint is a result of any malice or vengeance by the complainant, the subsequent incidents as mentioned above would certainly have fair amount of relevance, more so in view of the fact that the complaint has been lodged after a fairly long period of ten years from her marriage. Relevance of all these facts cannot be ignored in this case and if so, can be construed to be the suppression of material facts. Thus the complainant was duty bound to come with clean hands to let the trial Court know about the actual background of the case in order to come to a proper finding as regards the maintainability thereof, which the complainant has not done in this case. It is also not on record as to what aggravating circumstance has prompted the complainant to lodge the instant complaint making allegations regarding 10 years old facts when she has never found it proper to come up with the same, at any point of time during this period, before filing this complainant. This can fairly attribute to the probability of the complaint being a result of only concoction and after thought plan of action of the complainant, to have emerged to fulfill personal vendetta against the petitioners.

27. The judgments referred to by the petitioner on the points of suppression of fact and also delayed filing of complainant without explaining sufficiently and justifiably the reasons for such delay, are aiding to the petitioner's case.

28. So far as the offence under section 406 IPC is concerned, the complainant had to show prima facie ingredients of offence of criminal breach of trust in accordance with the provisions under section 405 IPC. Entrustment of any property, dishonest misappropriation thereof, conversion of the same for the use of the accused person or dishonest disposal of the same would constitute an offence under the said provision of law. In this case, however, it is on record that in a proceeding initiated by the present complainant under section 94 CrPC being Miss Case No.147 of 2015, pending in the Court of Judicial Magistrate at Kalna, Burdwan, all the streedhan properties have already been seized by police, in connection with the said case. This fact is also not disclosed by the complainant, in her said complaint. However, for all real and practical purposes, thus, none of the ingredients under the afore stated provision of law can be said to have been established, at least prima facie, by the complainant in the said complaint.

29. Same would be the findings as regards any ingredient of offence under section 506 IPC, regarding which the complaint is silent and nonspeaking.

30. The Supreme Court in the judgment of **Hamza Haji (supra)** has been pleased to lay down that when a person comes in a Court of law to seek relief with unclean hands and obtain a relief by playing of fraud on the Court, in that case the Court should be free to exercise its discretionary or extra ordinary power in prevention thereof. Further in the case of **S.P. Chengalvaraya Naidu (supra)** it held that a litigant who approaches the Court, is bound to produce all the documents relevant to the litigation. If he

withholds a vital document in order to gain advantage, then he would be guilty of playing fraud on the Court as well as on the opposite party.

31. Last but not the least, relevant portion from the judgment of **Inder Mohan Goswami (supra)** may also be extracted and taken into consideration for necessary guidance, which are as follows:

“25. Reference to the following cases would reveal that the Courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English Courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. DPP* [1964 AC 1254 : (1964) 2 WLR 1145 : (1964) 2 All ER 401 (HL)] Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the Court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *DPP v. Humphrys* [1977 AC 1 : (1976) 2 WLR 857 : (1976) 2 All ER 497 [HL (E)]] stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the Court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the Court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.

46. The Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.”

32. The points as raised by the opposite party in this case which are mainly technical in nature, should come into consideration only after satisfaction regarding the complainant establishing sufficient facts and materials in the complaint constituting a strong prima facie case. Since in

this case the complaint lacks as regards the same, there is no scope actually to even consider the points of argument advanced on behalf of the opposite party No.2. Contrarily, on the premises as discussed above, the criminal proceeding against the present petitioners appear to be a gross abuse of the process of the Court and the same being not free from malice or personal vengeance of the complainant, is not eligible to be proceeded with any further. Thus it is found that the present revision case merits success.

33. Hence the complaint Case number 189 of 2015 under sections 498A, 406, 506 and 34 of the Indian penal code, pending in the Court of judicial Magistrate 1st Court at Kalna and all proceedings in the same are hereby quashed and set aside.

34. Criminal revision being CRR No. 3658 of 2016 is allowed. Connected application, if any, is also disposed of.

35. Urgent certified copy of this judgment, if applied for, be given to the parties upon compliance of all legal formalities.

(Rai Chattopadhyay, J.)