

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.R.R. 3925 of 2016

With

CRAN 1 of 2017(Old No. CRAN 4975 of 2017)

CRAN 2 of 2018 (Old No. CRAN 336 of 2018)

Moumita Ganguly

Vs.

State of West Bengal

For the Petitioner :Mr. Soumik Ganguly, Adv.
Mr. S.Shasmal, Adv.

For the State :Mr. N.P. Agarwal, Adv.
Mr. Pratik Bose, Adv.

Heard on : June 05, 2023
Judgment on : July 08, 2023

Bibhas Ranjan De, J.

1. I am dealing with an application under Section 482 of the Code of Criminal Procedure 1973 with a prayer for quashing the Andal Police Station Case No. 122 of 2016 dated 18.05.2016 under Section 498A, 406, 34 of the Indian Penal Code (herein after refer to as IPC) pending before the learned Additional Chief Judicial Magistrate, Durgapur, Burdwan.
2. Mr. Soumik Ganguli, Learned advocate, appearing on behalf of the petitioner has submitted that marriage between Partha Chatterjee petitioner no. 4 and opposite party no. 2 Anima Chatterjee @ Jhuma Chatterjee was solemnized on 21.11.2011 and one application under Section 156(3) of the Code of Criminal Procedure (hereinafter referred to as CrPC) was filed by said Anima Chatterjee @ Jhuma Chatterjee on 05.05.2016 before the Court Learned Additional Chief Judicial Magistrate at Durgapur District Burdwan alleging offence under Section 498A, 406, 34 of the IPC against the petitioners/in laws. Mr. Ganguli has further contended that petitioner no. 4 Partha Chatterjee filed a divorce suit on 16.03.2016 and marriage was dissolved ex-parte on 08.06.2016. Mr. Ganguli submitted that there is no specific

allegation against any particular petitioner and the case was filed with a false allegation just to harass the petitioners.

3. Mr. Ganguli in support of his contention relied on a case of ***Kahkashan Kausar and other Vs. State of Bihar and others*** reported in ***(2022) 6 Supreme Court Cases 599***.

4. Learned advocate Mr. N.P. Agarwal appearing on behalf of the State has submitted that there is specific allegation of criminal breach of trust under Section 406 of the IPC as the mother in law, petitioner no. 2, Swapan Chartterjee was entrusted with all Stridhan articles particularly gold ornaments but those were not returned.

5. At the outset, I would like to reproduce section 498A as under:-

“ Section 498A. Husband or relative of husband of a woman subjecting her to cruelty.

¹[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 purposes 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.] ”

6. To constitute an offence under Section 498A of the IPC a complainant shall have to disclose that complainant was subject to cruelty either by her husband or relatives of her husband by doing any willful conduct culminating to commission of suicide or to cause grave injury or danger to life etc; or for causing harassment of the complainant or to coerce her or any of her relative to meet any unlawful demand.

7. This case was initiated by an application under Section 156(3) of the CrPC alleging inter alia that all the petitioners conjointly used to pick up quarrel with the opposite party no. 2/complainant and abused her in filthy language . In the month of June 2015 all accused person came to father's house of complainant and demanded Rs. 1,00,000/- but her father failed to satisfy their unlawful demand. From then on she was subjected to inhuman torture. In the month of September 2015 all the petitioners asked the complainant to inform her father to meet the demand of Rs. 1,00,000/-. Thereafter, father and brother of the complainant came to her in laws house and refused to meet any unlawful demand then all the petitioners threatened to file divorce case against the

complainant with false and concocted grounds. On 10.01.2016 over such unlawful demand all the petitioners assaulted the opposite party no.2 / complainant. From the written complaint under Section 156(3) of the CrPC it is found that the application under Section 156 (3) was filed after receiving a notice of divorce under Section 13 of the Hindu Marriage Act.

8. Mr. Ganguli has tried to make this Court understand that all allegations made in the complaint were of general or omnibus in nature and in support of his contention he relied on ratio of ***Kahkashan Kausar*** (supra) and particular observations made in paragraphs 17 18 & 19 as follows:-

“17. 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.

18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that ‘all accused harassed her mentally and threatened her of terminating her pregnancy’. Furthermore, no specific and distinct allegations have been made against

either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.

19. Furthermore, regarding similar allegations of harassment and demand for car as dowry made in a previous FIR. Respondent No. 1 i.e., the State of Bihar, contends that the present FIR pertained to offences committed in the year 2019, after assurance was given by the husband Md. Ikram before the Ld. Principal Judge Purnea, to not harass the Respondent wife herein for dowry, and treat her properly. However, despite the assurances, all accused continued their demands and harassment. It is thereby contended that the acts constitute a fresh cause of action and therefore the FIR in question herein dated 01.04.19, is distinct and independent, and cannot be termed as a repetition of an earlier FIR dated 11.12.17.”

- 9.** This case was initiated by an application lodged by the de facto complainant Anima Chatterjee @ Jhuma Chatterjee by filing an application under Section 156(3) of CrPC alleging *inter alia* that she got married with petitioner no. 4 Patha Chatterjee on 21.11.2011 and after marriage she came to her in laws house where she entrusted all her ornaments with her mother in law (petitioner no.2). All petitioners used to pick up quarrel with her without any rhyme or reason and abused her in filthy languages. Petitioners did not provide any medical aid

to her and son. In the middle of June, 2015 all the petitioners came to her father's house and demanded Rs. 1,00,000/- from the father of the complainant, who failed to meet up the demand. Thereafter, she was subjected to inhuman torture.

10. Aforesaid allegations enumerated in the application under Section 156(3) of CRPC, I am of the opinion, are nothing but general and omnibus in nature.

11. Now, the op no. 2/ de facto complainant has tried to specify the aforesaid allegations in the application from paragraph 11 onwards. It is alleged that her husband and parent in laws came to the house of the petitioner no. 1 in the month of September 2015 and all the petitioners directed the complainant/ op no.2 to ask her father to meet their demand of a sum of Rs. 1,00,000/-. Accordingly, complainant asked her father who tried to make them understand that it was unlawful demand. Then they threatened to divorce the complainant. Subsequently, on 10.01.2016 all the petitioners assaulted him with slap and kick. On 16th February, 2016 the complainant along with her husband petitioner no. 4 came to her parental house where her husband again demanded Rs. 1,00,000/-. Again on 18.02.2016 all the petitioners came to

her father's house with the demand of Rs. 1,00,000/- but her father denied to pay the same. Then they threatened to file divorce suit and her husband (petitioner no. 4) send a notice of the divorce under Section 13 of Hindu Marriage Act.

12. Mr. Ganguli on behalf of the petitioners has submitted that divorce suit was decreed ex-parte because of non appearance of the complainant/op no. 2.

13. There is nothing mentioned in the complain under section 156 (3) about the purpose of demand initially in the year 2015 while complainant was married in the year 2011 and admittedly in the year 2012 she gave birth a male child. Though evidence collected in course of investigation disclosed that the complainant was driven out after assault on 18.02.2016 but nothing is appearing in the complaint under Section 156(3) of CrPC to that effect.

14. From the record it appears that one Matrimonial Suit No. 88 of 2016 was filed on 16.03.2016 and summons was duly served upon the complainant/ op no. 2 who did not appear inspite of receiving summons far to speak of challenging the grounds taken for divorce in the Matrimonial Suit No. 88 of 2016. Consequently, on 08.06.2016 the said Matrimonial Suit

was decreed ex-parte on the ground of cruelty under Section 13 (1) (ia) of the Hindu Marriage Act. It is an admitted position that complaint under Section 156 (3) of CrPC was filed after filing of the Matrimonial suit on 16.03.2016.

15. That apart from the record, I find that one CRAN application being no.4975 of 2017 was filed jointly by all the petitioners/ accused as well as de facto complainant/op no.2 with a prayer for quashing the proceeding of GR Case no. 834 of 2016 arising out of Andal Police Station Case No. 122 of 2016 dated 18.05.2016 under Sections 498A, 406, 34 of the IPC. In that CRAN application it is embedded that the criminal proceeding was initiated due to **some misunderstanding** in between the parties.

16. In the above conspectus I find no other alternative but to hold that allegations made in the complain under Section 156(3) of CrPC were all general and omnibus for which proceeding cannot be allowed to continue otherwise it would result in an abuse of process of law .

17. In the aforesaid view of the matter the impugned GR Case no. 834 of 2016 arising out of Andal Police Station Case

No. 122 of 2016 dated 18.05.2016 under Sections 498A, 406, 34 of the IPC stands quashed.

- 18.** The revision application stands allowed.
- 19.** Case diary be returned.
- 20.** Pending applications, if there be any, stand disposed of.
- 21.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]