

Court No.35
Item No. 26

**Arindam Roy
Vs.
State of West Bengal & Anr.**

... For the petitioner

... for the State

The petitioner is represented, as well as the State. However opposite party No.2/wife is not represented. Record reveals that previously on several occasions opposite party no.2 has been served with notice. Service upon her has also been effected through the concerned police station, on various occasions like in the year 2016, 2022 and latest in 2023. The report of compliance submitted by the concern police officer shows that the opposite party no.2 has been duly made aware of pendency of this case as well as the same being taken up

for adjudication by the Court. Hence, so far as the knowledge of the opposite party no.2 regarding the case being taken up for adjudication, is concerned – can duly be presumed from the documents as above. It is noted that in spite of her knowledge the opposite party no.2 has chosen not to appear in defending her cause in this case. Hence, in view of the long pendency of the present case, which was filed back in the year 2016, and taking note of the facts as above, the same is taken up for hearing and disposal in absence of the opposite party no.2.

The petitioner's case rests on the points inter alia that:

The FIR dated 30.09.2016 as mentioned above would not disclose against the present petitioner any cognizable offence is alleged, liable to be tried in a Court of law. By referring to the copy of the said FIR it has been submitted that the same is a non-specific and vague one, so far as the allegations against the petitioner are concerned. That the FIR is a belated one without however rendering any explanation as to the purported delay in lodging the same, there by rendering the same also clouded with doubt regarding credibility of the narrations therein.

The fitful matrimonial life and the previous and post occurrences from the date of lodging the FIR would definitely suggest about concoction of the FIR narrated story as well as the intention of the de facto complainant to victimise and wreaking vengeance against the present petitioner, by filing the said FIR out of sheer malice – submits Mr. Bhattacharya, representing the petitioner.

Some judicial pronouncements of the Hon'ble Apex Court have been relied on behalf of the petitioner, to substantiate and support his

points of argument as stated above:-

(i) *Gurnaib Singh vs. State of Punjab*, reported in **(2013) 7 SCC 108**,

(ii) *Shakson Belthissor vs. State of Kerala*, reported in **AIR 2010 SC (Supp) 864**.

These two judgments have been referred to substantiate petitioner's argument on the point that the ingredient of "cruelty" as envisaged under Section 498A IPC has not been prima facie brought on record in the FIR against the present petitioner.

(iii) *Neelu Chopra & Anr. vs. Bharti*, reported in **AIR 2009 SC (Supp) 2950**,

(iv) *Sushil Kumar Mohanka & Ors vs. State of West Bengal & Anr*, reported in **2023 LawSuit (Cal) 104**.

These two judgments have been referred to fortify the point of the petitioner that vagueness of the written complaint, which is devoid any specific date and time of offence or particular role of the offender, as allegedly in this case, shall render the FIR to be treated as a non-est in the eye of law and the same cannot be held to have disclosed any ingredient of offence under Section 498A IPC.

(v) *Pinakin Mahipatray Rawal vs. State of Gujarat*, reported in **AIR 2014 SC 331**,

This case has been referred to indicate the proposition that merely the husband having developed an extra marital affairs without any allegation to satisfy the ingredient of 498A IPC, would not amount to "cruelty" as defined in the said provision of law.

The petitioner has further referred to the judgment of **(vi) Varala Bharath Kumar vs. State of Telangana**, reported in **AIR 2017 SC 4434**. It has submitted that the Court has to exercise its inherent jurisdiction, as in this case, by invoking doctrine of 'ex debito justitiae', i.e, to do real and substantial justice and only citing incidence of unhappiness in a matrimonial life without any specific allegation regarding fulfilment of the conditions of the offence as alleged, the offence cannot be said to have prima facie constituted.

(vii) Anand Kumar Mohatta vs. State (govt. of NCT of Delhi), reported in **AIR ONLINE 2018 SC 395**. By referring to this judgment Mr. Bhattacharya has submitted that to prevent the miscarriage of justice and abuse of the process of Court, this Court is empowered to exercise its inherent jurisdiction under Section 482 Cr.P.C, 1973, even after filing the charge sheet by police in the case.

Mr. Ali, while representing the State has raised strong objection and challenged to the contention and prayer of the petitioner. Mr. Ali submitted the case diary in Court.

By referring to the relevant portion of the case diary Mr. Ali has made the endeavour to put forth that in the FIR as well as the materials collected by police during investigation, strong prima facie as regards the alleged offence has been brought on record so as to implicate the petitioner in a way that he must be put into trial to prove the guilt. Mr. Ali has further referred to the treatment paper of the opposite party no.2 available in the case diary to suggest that the offence with which the police has submitted charge sheet in this case, i.e, under Section 498A and 323 IPC are sufficiently made out, when the Court would be

satisfied about the existence of strong prima facie material against the petitioner, so far as the alleged offence is concerned.

Mr. Ali has further emphasized that Section 498A IPC contemplates not only physical abuse or torture but also mental torture inflicted upon the victim to bring the accused person within the purview of the aforestated provision of law. Indeed this is well settled. Even the judgments relied on by the petitioner, like, **Gurnaib Singh (supra)** and **Shakson Belthissor (supra)**, would promulgate such a principle.

During argument Mr. Ali has taken this Court through the documents, to submit that the petitioner has caused mental torture upon the opposite party no.2 as she was promised to be given with the custody of the two sons and under such a false promise she was made to sign and give consent to a suit for divorce of mutual consent, but ultimately the petitioner has reverted back from his stand and has not let the two sons to remain in custody of the opposite party no.2.

Since this case relates to the matrimonial disharmony between the husband and wife, certain facts both prior to and after lodging of the present FIR may be taken note of and into consideration while adjudicating this case.

Firstly, the parties have expressly come up against each other pursuant to a case being Baguiati Police Station Case No.1032/15 dated 04.11.2015 under Section 365 IPC. The case was lodged by the father of the opposite party no.2. Allegedly the opposite party no.2 was missing and the de facto complainant/father of opposite party no.2 lodged the FIR against the present petitioner. From a report of the concerned police officer dated 03.12.2015, it appears that the opposite

party no.2 was discharging her duties at her place of work and on 14.10.2015 she had already made a statement before the police authorities in writing that her husband, i.e, the present petitioner was being harassed unnecessarily by her father and brother, being entangled in such a criminal proceeding.

Thereafter it appears that on 28.04.2016 the parties filed a suit under Section 28 of the Special Marriage Act, 1954 in the Court of District Judge at Darjeeling for a decree of divorce on mutual consent. The suit was finally dismissed as the opposite party no.2 had withdrawn her willingness and consent to proceed with the suit any further. The suit was dismissed vide order dated 28.04.2016.

Thereafter on 30.09.2016 the present case was lodged. It is pertinent to mention that in the said divorce suit, in the plaint the present opposite party no.2/wife have stated on affidavit that the sons of the parties would be in custody of the present petitioner, after their divorce.

After lodging of the present FIR and during the pendency of the investigation the opposite party no. 2/wife preferred a suit claiming custody of the children, which ultimately has resulted into passing a decree by the concerned Court, pursuant to an agreement arrived at between the parties in mediation. The order of the Court is dated 18.05.2017 and the arrangement was made by and between the parties in a process of mediation that each of the parents will have custody of one son.

The other fact which is required to be taken note of is that during pendency of the present revision, the investigation has culminated into

filing of charge sheet by police against the present petitioner under Section 498A IPC.

It is the well settled principle of law that to exercise the extraordinary power and the inherent jurisdiction of this Court under Section 482 Cr.P.C, 1973, this Court has to look for existence prima facie material as regards the offence alleged against the accused person, be available in the FIR /other materials. Availability of strong prima facie material regarding the cognizable offence as alleged against the accused person would only render further proceedings against him justifiable and otherwise it would render any such further proceeding as an abuse of the process of Court. It is the law that by exercise of power under Section 482 Cr.P.C, 1973, this Court has to prevent any such abuse of the process of Court. Accordingly this Court is duty bound in this case to examine if the ingredient of offence as alleged against the petitioner is actually found in the FIR or the same suffers vagueness as alleged by the present petitioner in this case. It is noted at the very outset that the de facto complainant/opposite party no.2 has came up with the present FIR alleging offence under Section 498A against the petitioner, after eight years of marriage and after more than one year of her living separate from her husband. This delay has, however, remained unexplained in the FIR. This Court is constrained to notice about absence of any specific material like date, time and role of the present petitioner as regards the alleged act of ferity, be it physical or mental in the FIR and others. This point has been categorically mentioned on behalf of the petitioner and also it is rightly pointed out that such vagueness in the FIR goes on to render the same as a non-specific one for which the offence alleged against the petitioner cannot

be said to have been established through strong prima facie materials.

At this juncture it is found profitable to look into the ingredients of offence for which petitioner has been alleged of, as envisaged in the relevant statutory provision:-

“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 purposes of this section, "cruelty means"—

(a) anywilful 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.”

Mr. Ali has very categorically defended the State by stating that both the prima facie ingredients of physical and mental “cruelty” has been established through the materials in the FIR as well as during the investigation. But the vagueness or non-specificness of the FIR as discussed above has not been defended by the State. Neither the State has made any submission regarding the delay in filing the FIR. On the contrary the point of mental cruelty allegedly inflicted by the petitioner by extending false promise of allowing the two children to remain in her custody, it can be stated that the stand of the opposite party no.2 taken subsequent to filing of the present FIR, i.e, accepting and consenting to an arrangement of leaving one child in custody of the petitioner and which arrangement between the parties, have been given the seal of the Court, virtually negates such a submission by Mr. Ali. His earnest

efforts are appreciated but the same unfortunately would not help the prosecution in this case.

Contrarily this Court is constrained to find that so far as the ingredients of offence under Section 498A is concerned, against the present petitioner, those are not at all bearing either in the FIR or in the other materials collected during investigation in this case. The unexplained delay in lodging the FIR as well as the vagueness of the allegations made therein, would render the same to be devoid of necessary prima facie material to construe existence of cognizable offence of the present petitioner. This Court cannot but hold that the allegations made by the de facto complainant in the FIR, even if taken on their face value, would not certainly make out a case under Section 498A IPC, against the present petitioner. Under such circumstances to proceed further against him in a Court of law would be gross abuse of the process Court as well as that on law.

On the discussion as above it is found that the present case is a fit one in which the Court should invoke powers under provisions of Section 482 Cr.P.C, and quash the proceedings. Baguiati Police Station Case No.1123 dated 01.10.2016 under Section 498A IPC, now pending in the Court of Ld. Chief Judicial Magistrate, Barasat, corresponding to G.R. No.4267/16. Hence, the said case is quashed and set aside.

Hence, this revision being C.R.R 3934 of 2016 succeeds and is disposed of.

Case diary be returned.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay, J.)