

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

CIRCUIT BENCH AT JALPAIGURI

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 5 of 2022

Sri Santosh Poddar & Anr.

vs.

The State of West Bengal & Anr.

For the Petitioner

: Mr. Sudipto Kumar Mazumdar,
Mr. Soumik Sarkar,
Mr. Subhadeep Sarkar.

For the State

: Mr. Aditi Sankar Chakraborty,
Mr. Ujjwal Luksom.

Heard on : 12.04.2023

Judgment on : 13.04.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of Bhaktinagar P.S. Case No. 1518 of 2021 dated 28.11.2021 under Sections 48A/506 of the Indian Penal Code pending before the Court of the learned Additional Chief Judicial Magistrate, Siliguri.

2. The petitioner's case in short is that the opposite party no. 2 had filed a written complaint with Tala Police Station being Tala Police Station Case No.71 dated 24.4.2021 under Sections 498A/323/324/506/509/34 of the Indian Penal Code. It is the case of the opposite party no.2 that she was married to the petitioner no.2, thirteen years back and was being harassed and threatened for last eight years. Subsequently on 28.11.2021, the opposite party no.2 filed another case against the petitioner being Bhaktinagar Police Station Case No.1519 of 2021 under Sections 498A/506 of the Indian Penal Code on the ground that the accused are threatening to kidnap the children.

3. **Mr. Sudipto Majumder, learned counsel for the petitioner** has submitted that continuance of Bhaktinagar Police Station case on the same facts and circumstances will compel the petitioners to face trial at two different places which is an abuse of the process of the court and law and as such continuation of this proceeding is against the interest of justice.

4. It is further submitted that the complaint before the Bhaktinagar Police Station on 28.11.2021 is hit by the provision of Section 162(2) of the Cr.P.C and at best could be treated as a statement and not a new criminal

case and this subsequent criminal case cannot be sustained as it is not in accordance with law.

5. Learned Public Prosecutor has placed the case diary.

6. Learned counsel for the petitioner has relied upon the judgment of the Supreme Court in ***T.T. Antony vs State of Kerala and Ors., (2001) 6 SCC***

181, on July 12, 2001, the Supreme Court held that:-

“There can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. Only information about commission of a cognizable offence which is first entered in station house diary by officer in charge of the police station can be regarded as FIR under Section 154. All such subsequent informations will be covered by Section 162. Officer in charge of the police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173. Even if after conclusion of the investigation pursuant to filing of the FIR and submission of report under Section 173(2), the officer in charge of the police station comes across any further information pertaining to the same incident, he can make further investigation, normally with the leave of the court and forward the further evidence, if any collected, with further report or reports under Section 173(8).”

7. From the case diary it is found that the FIR before the Tala Police Station is dated 24.4.2021 and the case filed with Bhaktinagar Police Station is dated 28.11.2021 (present case). The contents of the written complaint are similar and relate to the same facts and circumstances.

8. Considering all the material of record and the facts and circumstances of this case, this court also relies upon the judgment of the Supreme Court in ***Kahkashan Kausar @ Sonam & Ors. vs. State of Bihar & Ors., 2022 LiveLaw (SC) 141***, wherein the 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 10 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.”

9. In the present case, the materials on record also do not prima facie make out the offences as alleged and as such the proceedings under revision is liable to be quashed, as the continuation of the said proceedings (subsequent) shall be an abuse of the process of court/law.

10. **CRR 5 of 2022 is allowed.**

11. The proceeding Bhaktinagar P.S. Case No. 1518 of 2021 dated 28.11.2021 under Sections 48A/506 of the Indian Penal Code pending before the Court of the learned Additional Chief Judicial Magistrate, Siliguri, is hereby quashed.

12. There will be no order as to costs.

13. All connected Applications stand disposed of.

14. Interim order if any stands vacated.

15. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

16. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)