

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble Justice Ananya Bandyopadhyay.

CRR 228 of 2022

Ajoy Barman @ Ajay Kumar Barman & Anr.

Vs.

The State of West Bengal & Anr.

For the petitioners : Mr. Arijit Ghosh

For the State : Mr. Aditishankar Chakraborty, ld. A.P.:
Mr. Biswarup Roy

Heard on : 08.05.2023

Judgement on : 12.05.2023

ANANYA BANDYOPADHYAY, J.:

1. The petitioners have filed the instant criminal revisional application seeking for a direction to quash the proceedings of Women Police Station, Jalpaiguri Case No 52 of 2019, dated 20.05.2019 filed under Section 498A of the Indian Penal Code, 1860 read with Sections 3/4 of the Dowry Prohibition Act, 1961 (Corresponding to G.R. Case No 1790 of 2019) pending before the court of the Ld. 1st Judicial Magistrate at Jalpaiguri.
2. The Ld. Trial Court as aforesaid took cognizance of the case cited above based on the complaint filed by the opposite party no. 2 inter alia alleging physical and mental torture supplemented by demand

of dowry by the petitioners including the husband of the opposite party no. 1.

3. Investigation through the formal FIR drawn on 20.05.2019 ended in submission of charge sheet on 31.07.2019 against the petitioners and the co-accused persons under section 498A of the Indian Penal Code 1860, read with Sections 3/4 of the Dowry Prohibition Act, 1961.
4. The Ld. Advocate for the Petitioners and the Ld. Advocate for the State submitted their rival contentions.
5. Sections 498A of the Indian Penal Code states as follows:

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 willful 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. Sections 3 and 4 of the Dowry Prohibition Act state as follows:

*Section 3. **Penalty for giving or taking dowry** – (1) if any person, after he commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more.*

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.

*Section 4. **Penalty for demanding dowry** – if any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees.*

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

7. The narrative of the opposite party no. 2 in the alleged complaint did not explicitly describe the specific role played by either of the petitioners herein to have inflicted direct physical and mental torture upon the opposite party no. 2. The petitioner no.2 a married lady resides at a separate and distinct address who has not been accused categorically to demand dowry, or resort to any coercive means.
8. The charge sheet bearing 82/19 dated 31.07.19 cited '6' (six) prosecution witnesses intended to be examined, 2 (two) of whom are the police witnesses and the rest are the relatives of opposite party

no 2. Apart from her relatives, other independent witnesses have not been cited to be examined. There are inconsistencies in the statement of the witnesses recorded under section 161 Cr.P.C. and that of the complaint which has been lodged nearly after a year of the opposite party no 2's return to her parent's house and the access of the petitioners to cause the alleged offences upon the opposite party no. 2 must be restricted and therefore remote.

9. The facts stated in the complaint do not justify the ingredients to constitute the offences to have been committed by the petitioners and to allow to continue with the proceedings pending before the Trial Court would be abuse of the process of law, creating hardship, harassment and ignominy to the petitioners.
10. In **State of Haryana and Ors. v. Bhajan Lal and Ors.**¹ this Court in the backdrop of interpretation of various relevant provision of the Code of Criminal Procedure (for short, Cr.P.C.) 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 Cr.P.C. 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

¹ MANU/SC/0115/1992 : 1992 Supp. (1) SCC 335

channelized and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

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 of 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 office 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 concerned Act (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 concerned Act, 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.”

11. In **Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors.**² comprehensively examined the legal position. The court came to a definite conclusion and the relevant observations of the court are reproduced in para 24 of the said judgment as under:

“Inherent powers under Section 482 Cr.P.C. 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.”

12. Accordingly, the proceedings being Women police station, Jalpaiguri Case No. 52 of 2019, dated 20.05.2019 under Sections 498A of the Indian Penal Code, 1860 read with Sections 3/4 of the Dowry Prohibition Act, 1961, (Corresponding to G.R. Case No. 1790 of

² MANU/SC/7999/2007 : (2007) 12 SCC 1

2019) pending before the Court of the learned Judicial Magistrate, 1st Court at Jalpaiguri is quashed.

13. This criminal revisional application being CRR 228 of 2022 is disposed of.
14. There is no order as to cost.
15. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.
16. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(ANANYA BANDYOPADHYAY, J.)