

08.5.2023  
Sl.2  
Ct. No.3  
SD

***CALCUTTA HIGH COURT***  
***In the Circuit Bench at Jalpaiguri***

CRR 234 of 2022

**In re: Narayan Biswas & Ors.**

**... petitioners.**

Ms. Suman Sehanabis  
Mr. Salok Sah

... for the petitioners.

Mr. Aditi Shankar Chakraborty  
Mr. Arjun Chowdhury

... for the State.

Mr. Jagriti Mishra  
Mr. Reshab Kumar  
Mr. Subham Gupta  
Mr. Debayan Goswami

... for the Opposite Party No.2.

Affidavit of service filed by the petitioners in court today be taken on record. Investigating officer is present with the case diary.

This is an application under Section 482 of the Code of Criminal Procedure wherein the petitioners have prayed for quashing of proceeding being G.R. Case No.572 of 2021 arising out of Pundibari Police Station Case No.210 of 2021 dated 06.5.2021 under Section 498A of the Indian Penal Code.

The petitioners contended that the petitioners are father in law, mother in law and elder brother in law of the defacto complainants. The opposite party no.2 being defacto complainant lodged a written complaint on May 6, 2021 contending that she got married with one Bablu Biswas (who is not the petitioner herein) on 19<sup>th</sup> February, 2018. After few days of marriage, said Bablu Biswas being inspired by the petitioners herein inflicted physical and mental torture upon the opposite party no.2, and they put pressure upon the opposite party no.2 demanding more dowry. On refusal to pay additional

dowry, the accused persons abused her with filthy languages.

Ultimately, on 20.4.2021 at about 8:00 p.m. said Bablu Biswas in collusion and connivance with the petitioners herein physically assaulted the opposite party no.2 and ultimately had driven her from her matrimonial home. Finding no other alternative, the opposite party no.2 took shelter at the residence of her parents.

On the basis of said allegation, police started investigation and after completion of investigation, charge sheet has been submitted under Section 498A of the Indian Penal Code against the present petitioners and also against said Bablu Biswas.

Ms. Suman Sehanabis, learned counsel appearing on behalf of the petitioners, submits that the petitioners have already obtained anticipatory bail from the Sessions Court which has been subsequently confirmed by the Judicial Magistrate. She further submits that allegations brought by the opposite party no.2 herein against the petitioners are all false, fabricated, concocted, manufactured and fictitious. In fact, the opposite party no.2 herself was unwilling to continue her marital tie with her husband and she was all along unwilling to continue her marital journey and she had a habit to leave her matrimonial home very off and on without informing anyone.

She further submits that the opposite party no.2 in most of the time was residing with her husband at Village - Sonari New Kuthirkuthi under the jurisdiction of Pundibari Police Station at Coochbehar and she has falsely implicated the present petitioners to denounce their prestige in the society and in order to harass them unnecessarily. On 23.4.2021, the opposite party no.2 without intimating anyone has left her matrimonial house and thereafter, her husband lodged a missing diary to the Officer-in-Charge, Itanagar Police Station wherefrom the opposite party no. 2 was missing and the Officer-in-

Charge, Itanagar Police Station (Arunachal Pradesh) took necessary endeavour to find out the opposite party, but failed. Subsequently, on 06.5.2021, the opposite party no.2 lodged the aforesaid complain.

She further submits that it is not understandable why after a long period of alleged occurrence, the opposite party no.2 lodged complain under Section 498A of the Indian Penal Code. She further submits that the petitioner no.3 is a Group-B Gazetted Officer and is presently residing at Guwahati, Assam and before that he was posted at Himachal Pradesh, Mizoram and he never stayed together with the opposite party no.2, so the question of inflicting torture upon opposite party no.2 by the petitioner no.3 does not arise at all. It is a mere imaginary allegation brought against him at the behest of the opposite party no.2. In fact, the petitioner nos.1 and 2 are old aged ailing persons and treated opposite party no.2 as their own daughter. No criminal overact has been attributed by the opposite party no.2 against the present petitioners and as such, it does not attract the ingredients of Section 498A of the Indian Penal Code and as such prayed for quashing of the said proceeding against present petitioners.

Learned counsel appearing on behalf of the opposite party no.2 submits that the allegations in the FIR are very specific that the petitioners herein gave direct instigation and as they have instigated the principal accused/husband, so the husband has physically assaulted her. Moreover, charge sheet has already been submitted and as such, the accused persons should face trial in order to unearth the truth and the question of quashing the said proceeding at this stage does not arise. Accordingly, he prayed for dismissal of the instant application.

Learned counsel appearing on behalf of the State produces the case diary and submitted that sufficient materials have been collected by the Investigating Officer during investigation against the present petitioners and charge sheet

has been submitted after completion of investigation and now the matter is pending for framing of charge and as such, if at this stage the proceeding is quashed, it may cause prejudice to the State.

I have gone through the materials in the record as well as materials available in the case diary.

Case diary reveals that during investigation, police has only recorded statement of three witnesses under Section 161 of the Code of Criminal Procedure and all the three witnesses have stated that they have heard from defacto complainant Piyali Das that the principal accused/husband (who is not the petitioner herein) and the people of matrimonial home (sasurbarir lokjan) created pressure upon her for bringing more dowry and when she refused to bring the same, she was driven out from her matrimonial home. No specific overact has been alleged against the present petitioners. No other incriminating material against present petitioners is appearing in the case diary.

Upon perusal of contents of FIR it only reveals that the allegations against petitioners herein in that they had given ill advice (kuparamarsha) to the husband accused, which also not even specific in the statement recorded under section 161 of the code which describes perpetrators as men of matrimonial home (Sasurbarir lokjan). No distinct or specific role in furtherance of general allegations made against them, which leads to a situation wherefrom it is hardly ascertainable, the exact role played by each accused in furtherance of the offence. The allegations against present petitioners are general and omnibus and the veiled object might be to harass the petitioners herein.

It is well settled that in order to lodge a proper complaint, mere mention of the sections and the language of the sections is not be all and end of the matter. What is required to be brought to the notice of the court is the

particulars of the offence committed by each accused and the role played by each and every accused in committing of that offence. Present FIR does not disclose specific allegation against each and every petitioner herein in committing of alleged offence except casual reference of their names as “ill adviser” and as such it would not be just to direct them to go through protracted trial procedure. Supreme court in several instances highlighted that a criminal trial leading to an eventual acquittal also inflicts severe scars upon accused and such exercise must be discouraged.

In ***kahkashan Kausar @ Sonam and others Vs. State of Bihar and others*** reported in **2022 SCC Online SC 162**, Supreme Court considering series of decisions passed in this context observed as follow:-

*“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.”*

In so far as husband of defacto complainant is concerned, since he is not the petitioner herein, I have not examined the veracity of allegations made against him. However so far as petitioners herein are concerned, the allegations made against them being general and omnibus do not warrant prosecution.

Considering the facts and circumstances of the case and the materials available in the case diary, it appears that the continuance of present proceeding against the petitioners will be an abuse of process of court and there is hardly any chance of conviction of the present petitioners on the basis of materials collected during investigation.

I therefore, deem it just and legally appropriate to quash the proceeding

against the present petitioners.

In view of above, CRR 234 of 2022 is allowed.

The proceeding being G.R. Case No.572 of 2021 arising out of Pundibari Police Station Case No.210 of 2021 dated 06.5.2021 under Section 498A of the Indian Penal Code is hereby quashed against the present petitioners only.

Case diary submitted by the State be returned.

Investigating Officer be released.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

**(Ajoy Kumar Mukherjee, J.)**