

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 65 of 2022

Afroja Bibi @ Aporoja Bibi

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Manas Kumar Das.

For the State : Mr. Debabrata Chatterjee,
Ms. Sonali Das.

Hearing concluded on : 12.11.2024

Judgment on : 13.11.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for quashing of the proceeding in G.R. Case No. 1005 of 2021 including the Charge Sheet No. 363 of 2021 dated 30.07.2021 under Sections 498A/323/34 of the Indian Penal Code and Section 3 and 4 of the Dowry Prohibition Act, in Kandi P.S. Case No. 343 of 2021 dated 07.07.2021, pending before the learned Additional Chief Judicial Magistrate, Kandi, Murshidabad.
2. The petitioner's case is that she is not related to the husband of the de facto complainant but has been falsely implicated in the present case and, as such, she has prayed that the proceedings may be quashed against her.
3. From the written complaint it appears, that the de facto complainant who has failed to appear in spite of due service, alleged that she was married to one Lalbabu Sk., son of late Umrej Sk. of village-Jasahori nearly 17 years back as per Islamic rites and customs. After marriage out of the wedlock, two babies were born, Arjena Khatun and Jewel Sk. Her husband went to Saudi Arab for work four years back. While staying there her husband did not take any information or send money to her. 10 years back her husband returned from Saudi Arab but did not meet with her. On 05.07.2021 at about 10 A.M. her husband along with **Afroja Bibi**, the petitioner herein, came to her and told her to give Rs.1,00,000/- for continuing her matrimonial life. She protested. Then her husband started assaulting her with fist, kick and slap. They tried to kill her by strangulation. At that time the

accused no. 2, being the petitioner herein held the hands of the de facto complainant and the accused persons tried to kill her, at that time her children arrived and shouted. Local people came and these people fled away.

4. Section 498A IPC, lays down:-

“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 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.

Ingredients of offence- *The essential ingredients of the offence under sec 498A are as follows:*

- 1) A woman was married;*
- 2) She was subjected to cruelty;*
- 3) Such cruelty consisted in-*
 - i) Any lawful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical;*
 - ii) harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the lawful demand;*
 - iii) the woman was subjected to such cruelty by her husband or any relation of her husband.*

5. Considering the materials on record it appears that the ingredients required to constitute the offence under Section 498A of the IPC is not present in respect of the petitioner herein, who is **admittedly not a relative of the husband of the de facto complainant** and, as such, the learned Magistrate at the time of framing of charge/plea shall take the said fact into consideration.
6. Regarding the charge under Section 323/34 IPC, this Court finds prima facie the ingredients required to constitute the offence under Section 323 IPC is prima facie present against the petitioner.

7. Section 323 IPC reads as follows :-

“323. Punishment for voluntarily causing hurt.—Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Ingredients of offence.— The essential ingredients of the offence under Section 323 are as follows:-

- (1) Accused voluntarily caused bodily pain, disease or infirmity to the victim.
- (2) The accused did so with intention of causing hurt or with the knowledge that he would thereby cause hurt to the victim.”

8. There is thus a prima facie case against the petitioner for offence punishable under Section 323/34 IPC.
9. Accordingly, the present revisional application is disposed of with the direction that the proceedings before the Trial Court in respect of the petitioner herein, shall continue in respect of the offence punishable

under Section 323/34 IPC, in accordance with law. The charge under Section 498A IPC is dropped in respect of the petitioner herein Afroja Bibi @ Aporoja Bibi.

- 10.** All connected applications, if any, stand disposed of.
- 11.** Interim order, if any, stands vacated.
- 12.** Let a copy of the judgment be sent to the learned trial Court for compliance.
- 13.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)