

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 494 of 2022

ABHISHEK DASGUPTA
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Pawan Kumar Gupta,
Ms. Sofia Nesar,
Mr. Santanu Sett.

For the State : Ms. Baishali Basu,
Ms. Puspita Saha.

Hearing concluded on : 11.12.2024

Judgment on : 11.12.2024

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred against the proceeding in connection with Titagarh PS case no.162 of 2020 dated 27.02.2020 under Sections 341, 448, 323, 325 and 120B of the Indian Penal Code, 1860 and the subsequent impugned chargesheet therein being Titagarh PS chargesheet no.272 of 2020 dated 30.06.2020 under Sections 341, 448 and 323 read with Section 34 of IPC being GR case no.1487 of 2020 before the learned Additional Chief Judicial Magistrate at Barrackpore, North 24 Paraganas.

2. The petitioner herein is the brother-in-law (*NONOD'S husband*) of the de facto complainant. It appears from the materials on record that the petitioner got married to Puja Chakraborty on 13.03.2019 and thereafter due to some matrimonial dispute the parties started residing separately on and from 15.01.2020. Subsequently they went for separation by filing a mutual divorce petition on 29.01.2021 before the concerned Court. **The marriage between the parties was dissolved by a decree of divorce on 04.09.2021 in Matrimonial Suit No.290 of 2021.**
3. The petitioner has been arraigned as accused in the present case on the basis of an application under Section 156(3) of Cr.P.C., 1973 filed by the opposite party no.2, being the ex-husband of the de facto complainant's sister-in-law.
4. In the application under Section 156(3) of the Cr.P.C. filed by the de facto complainant, the petitioner has been implicated as accused no.5. The allegation in the said application is that the accused persons are trying to grab a shop room of which the complainant is the absolute owner. The complainant has further stated therein that on 08.02.2020 the accused persons came to her house and created disturbances and threatened the complainant to return the gold ornaments.
5. It appears from the order dated 04.09.2021 passed in Matrimonial Suit No.290 of 2021 that the petitioner's marriage was dissolved on the said date by a decree of divorce. In the said

order, it appears that the parties had been living separately from each other since 15.01.2020. The present case has been initiated on 27.02.2020.

6. Learned counsel representing the State has placed the case diary. It appears that the present case was registered on 27.02.2020. As such, the presence of the petitioner on the date and period of occurrence as alleged is prima facie not correct. The materials in the case diary also do not make out a prima facie case against the accused persons for the offences alleged.
7. In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)**, the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

'7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose

and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

‘102. (7) Where a criminal proceeding is manifestly attended with mala fides 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.’ Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases*

wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code 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 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of 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 or 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 officer 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.”

17. The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.**

- 8. The present case falls under **clause 3 and 7** of **Para 102** of **Bhajan Lal (Supra)**.**
- 9. In **Dara Lakshmi Narayana & Ors. vs State of Telangana & Anr., in Criminal Appeal No. of 2024 (arising out of SLP (Criminal) No. 16239 of 2024, decided on December 10, 2024,** the Supreme Court held:-**

“15. An offence is punishable under Section 498A of the IPC when a husband or his relative subjects a woman to cruelty, which may result in imprisonment for a term extending up to three years and a fine. The Explanation under Section 498A of the IPC defines “cruelty” for the purpose of Section 498A of the IPC to mean any of the acts mentioned in clauses (a) or (b). The first limb of clause (a) of the Explanation of Section 498A of the IPC, states that “cruelty” means any wilful conduct that is of such a nature as is likely to drive the woman to commit suicide. The second limb of clause (a) of the Explanation of Section 498A of the IPC, states that cruelty means any wilful conduct that is of such a nature as to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. Further, clause (b) of the Explanation of Section 498A of the IPC states that cruelty would also include harassment of the woman where such harassment is to coerce 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.

16. Further, Section 3 of the Dowry Act deals with penalty for giving or taking dowry. It states that any person who engages in giving, taking, or abetting the exchange of dowry, shall face a punishment of imprisonment for a minimum of five years and a fine of not less than fifteen thousand rupees or the value of the dowry, whichever is greater. Section 4 of the Dowry Act talks of penalty for demanding dowry. It states that any person demanding dowry directly or indirectly, from the parents or other relatives or guardians of a bride or bridegroom 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.

18. A bare perusal of the FIR shows that the allegations made by respondent No.2 are vague and omnibus. Other than claiming that appellant No.1 harassed her and that appellant Nos.2 to 6 instigated him to do so, respondent No.2 has not provided any specific details or described any particular instance of harassment. She has also not mentioned the time, date, place, or manner in which the alleged harassment occurred. Therefore, the FIR lacks concrete and precise allegations.

25. *A mere reference to the names of family members in a criminal case arising out of a matrimonial dispute, without specific allegations indicating their active involvement should be nipped in the bud. It is a well-recognised fact, borne out of judicial experience, that there is often a tendency to implicate all the members of the husband's family when domestic disputes arise out of a matrimonial discord. Such generalised and sweeping accusations unsupported by concrete evidence or particularised allegations cannot form the basis for criminal prosecution. Courts must exercise caution in such cases to prevent misuse of legal provisions and the legal process and avoid unnecessary harassment of innocent family members. In the present case, appellant Nos.2 to 6, who are the members of the family of appellant No.1 have been living in different cities and have not resided in the matrimonial house of appellant No.1 and respondent No.2 herein. Hence, they cannot be dragged into criminal prosecution and the same would be an abuse of the process of the law in the absence of specific allegations made against each of them.*

28. *The inclusion of Section 498A of the IPC by way of an amendment was intended to curb cruelty inflicted on a woman by her husband and his family, ensuring swift intervention by the State. However, in recent years, as there have been a notable rise in matrimonial disputes across the country, accompanied by growing discord and tension within the institution of marriage, consequently, there has been a growing tendency to misuse provisions like Section 498A of the IPC as a tool for unleashing personal vendetta against the husband and his family by a wife. Making vague and generalised allegations during matrimonial conflicts, if not scrutinized, will lead to the misuse of legal processes and an encouragement for use of arm twisting tactics by a wife and/or her family. Sometimes, recourse is taken to invoke Section 498A of the IPC against the husband and his family in order to seek compliance with the unreasonable demands of a wife. Consequently, this Court has, time and again, cautioned against prosecuting the husband and his family in the absence of a clear prima facie case against them.*

29. *We are not, for a moment, stating that any woman who has suffered cruelty in terms of what*

has been contemplated under Section 498A of the IPC should remain silent and forbear herself from making a complaint or initiating any criminal proceeding. That is not the intention of our aforesaid observations but we should not encourage a case like as in the present one, where as a counterblast to the petition for dissolution of marriage sought by the first appellant-husband of the second respondent herein, a complaint under Section 498A of the IPC is lodged by the latter. In fact, the insertion of the said provision is meant mainly for the protection of a woman who is subjected to cruelty in the matrimonial home primarily due to an unlawful demand for any property or valuable security in the form of dowry. However, sometimes it is misused as in the present case.

30. *In the above context, this Court in **G.V. Rao vs. L.H.V. Prasad, (2000) 3 SCC 693** observed as follows:*

“12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the 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 commission of 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 other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their 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.”

31. *Further, this Court in **Preeti Gupta vs. State of Jharkhand (2010) 7 SCC 667** held that 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 by the husband’s close relatives 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*

complainant are required to be scrutinized with great care and circumspection.

32. *We, therefore, are of the opinion that the impugned FIR No.82 of 2022 filed by respondent No.2 was initiated with ulterior motives to settle personal scores and grudges against appellant No.1 and his family members i.e., appellant Nos.2 to 6 herein. Hence, the present case at hand falls within category (7) of illustrative parameters highlighted in **Bhajan Lal**. Therefore, the High Court, in the present case, erred in not exercising the powers available to it under Section 482 CrPC and thereby failed to prevent abuse of the Court's process by continuing the criminal prosecution against the appellants."*

10. CRR 494 of 2022 is thus allowed.

11. The proceeding in connection with Titagarh PS case no.162 of 2020 dated 27.02.2020 under Sections 341, 448, 323, 325 and 120B of the Indian Penal Code, 1860 and the subsequent impugned chargesheet therein being Titagarh PS chargesheet no.272 of 2020 dated 30.06.2020 under Sections 341, 448 and 323 read with Section 34 of IPC being GR case no.1487 of 2020 before the learned Additional Chief Judicial Magistrate at Barrackpore, North 24 Paraganas **is hereby quashed, in respect of the petitioner namely Abhishek Dasgupta.**

12. All connected applications, if any, stands disposed of.

13. Interim order, if any, stands vacated.

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

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

[Shampa Dutt (Paul), J.]