

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

CRR 2206 of 2024

Banamali Mandal & Ors.
v/s.

The State of West Bengal & Anr.

For the Petitioners: Mr. Samrat Chowdhury, Adv,
Mr. Harish Kumar Singh, Adv.

For the State: Mr. Arijit Ganguly, Adv.,
Mr. Rajashree Tah, Adv.

Judgment delivered on: 14-11-2024

SUVRA GHOSH, J. :-

1. The petitioners have prayed for quashing of G.R. Case no. 79 of 2023 pending before the Learned Chief Judicial Magistrate, Dantan, Paschim Medinipur.
2. Learned counsel for the petitioners submits that the petitioners are the husband and members of the matrimonial family of the private opposite party. The first petitioner and the private opposite party were married on 14th June, 2019 and the private opposite party left her matrimonial home much prior to lodging of the complaint. The allegations made against the petitioners in the FIR are general and omnibus. Upon receipt of notice of

proceeding under section 9 of The Hindu Marriage Act filed by the first petitioner, the private opposite party lodged the complaint on false and frivolous grounds. The petitioner nos. 3, 4, 5 are the married sisters in law of the private opposite party who reside in their respective matrimonial homes. No prima facie case under section 498A/323/506/34 of the Indian Penal Code has been made out against the petitioners. Learned counsel has placed reliance on a judgment delivered by the Hon'ble Supreme Court on 3rd May, 2024 in Criminal Appeal no. 2379 of 2024 in support of his contention.

3. The private opposite party has not been represented despite service.
4. Learned counsel for the State has produced the copy of the case diary and drawn the attention of the Court to the statement of witnesses recorded under section 161 of the Code of Criminal Procedure.
5. It appears that charge sheet has been submitted against the petitioners under section 498A/323/506/34 of the Indian Penal Code.
6. It is trite law that jurisdiction under section 482 of the Code of Criminal Procedure ought to be exercised with extreme care, caution and circumspection. The test is whether the uncontroverted allegations as made out in the complaint prima facie establish the case and also whether continuation of such complaint shall amount to abuse of the process of the Court.
7. In the authority in State of Haryana v/s. Bhajan Lal reported in 1992 Supreme Court Cases (Cri) 426, the Hon'ble Supreme Court has laid down guidelines for exercise of power under section 482 of the Code has hereunder:-

“(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 F.I.R. 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 F.I.R. 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.”

8. In the case in hand, since charge sheet has been submitted upon completion of investigation, the FIR pales into insignificance. It appears from the charge sheet that the defacto complainant/private opposite party did not submit any document pertaining to her medical treatment and in fact submitted a written declaration before the Investigating Officer that she did not take any medical aid from any hospital or doctor and could not submit any injury report.
9. The allegations made against the petitioners are general and omnibus. The record is silent as to on which date the private opposite party left her matrimonial home and also the dates when she was allegedly tortured by the petitioners.
10. The term “cruelty” as described in section 498A of the Indian Penal Code is :-

“(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.”

11. In the case in hand, the allegation of cruelty as stated in the FIR has not been substantiated in course of investigation. It is evident that the FIR was lodged upon receipt of notice of the proceeding under section 9 of the Hindu Marriage Act by the complainant. The statement of the private opposite party and other witnesses recorded under section 161 of the Code of Criminal Procedure is not in conformity with the averments of the FIR. The allegations are vague and omnibus and do not make out a prima facie case under section 498A/323/506/34 of the Indian Penal Code against the petitioners.
12. In the words of the Hon’ble Supreme Court in Criminal Appeal no. 2379 of 2024, *“If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the court. The court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, prima facie, whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute.”*
13. Upon consideration of the material on record including the FIR and the charge sheet, this Court is of the view that the FIR or the charge sheet does not disclose any offence under section 498A/323/506/34 of the Indian Penal Code against the petitioners and continuation of the proceeding shall amount to abuse of the process of the Court.

14. In the result, the proceedings being G.R. Case no. 79 of 2023 pending before the Learned Chief Judicial Magistrate, Dantan, Paschim Medinipur be quashed.
15. The petitioners are released at once and discharged from their bail bonds.
16. C.R.R. 2206 of 2024 is disposed of.
17. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.
18. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)