

15.04.2024

Sl. No.: 39

Court No.30
BM

CRR 3859 of 2022

Sri Pravakar Ghosh & Ors.

Vs.

The State of West Bengal & Anr.

Mr. Uday Sankar Chattopadhyay
Mr. Suman Sankar Chatterjee
Ms. Trisha Rakshit
Ms. Rajashree Tah
Ms. Aishwarya Datta

... for the petitioners

Mr. Arijit Ganguly
Mr. Sandip Chakraborty

... for the State

Mr. Jayanta Narayan Chatterjee
Ms. Moumita Pandit
Ms. Jayshree Patra
Ms. Pritha Sinha

... for the opposite party no.2

1. The present revisional application has been preferred praying for quashing of the impugned criminal proceeding being G.R Case No.2032 of 2019 arising out of Chanditala Police Station Case No.453 of 2019 dated 20.10.2019, under Sections 498A/406/323/307/313/506 of the Indian Penal Code pending before the learned Additional Chief Judicial Magistrate, Serampore, Hooghly.
2. It appears that charge sheet in the present case has been filed for only offence punishable under Section 498A/406/506 of the Indian Penal code.
3. The marriage in the present case took place in the year 2016 and the petition of complaint has been filed in the year 2019.

4. From the written complaint, it appears that the complainant has a minor child and there has been specific demand of dowry from her by all the accused persons.
5. Learned counsel for the petitioners has filed a short note of argument along with judgment relied upon being CRR 877 of 2019 and CRR 261 of 2020 of Calcutta High Court, wherein the facts are different from the present case.
6. On perusal of the materials in the case diary, it appears that **the allegations of the complainant have also been prima facie supported by neighbours and other family members.**
As such a prima facie case of the offences alleged are present in respect of all the petitioners and interfering in such a proceeding shall be against the interest of justice and which shall be thus an abuse of a process of law.
7. **Section 498A of the Indian Penal Code.**

“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 wilful 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.”*

8. In *Rupali Devi vs State of U.P. (2019) 2 SCC (Cri) 558:*

(2019) 5 SCC 384 (3-Judge Bench), the Supreme Court

has held:-

Para 14. “.....The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being ill-treated are aspects that cannot be ignored while understanding the meaning of the expression “cruelty” appearing in Section 498A of the Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatise the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress caused by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.....”

9. The materials in the case diary and the circumstances as discussed clearly make out a prima facie case of cognizable offence against the petitioners and this is a case where the inherent powers of this court **should not be exercised so as to prevent the abuse of process of the Court and in the interest of justice.**

10. In ***Ramveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr., Special Leave petition (CRL.) No. 2953 of 2022***, the Supreme Court on 20.04.2022 held :-

*“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under **Section 482** of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under **Section 482** of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Atrocities Act. **Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.**”*

11. The following guideline of the Supreme Court in ***M/s Neeharika Infrastructure vs. The State of Maharashtra*** becomes applicable in this case.

12. The Supreme Court in ***M/s Neeharika Infrastructure Vs. The State of Maharashtra (on 13 April, 2021)***, in

Criminal Appeal No. 330 of 2021, citing several precedents held :-

“ * * * * *

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

vi) Criminal proceedings ought not to be scuttled at the initial stage;

ix) The functions of the judiciary and the police are complementary, not overlapping;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

* * * * *

13. The materials in the case diary and the charge sheet

here in makes out a clear prima facie case of a cognizable offence against the accuseds/petitioners and there is sufficient materials for proceeding against the accuseds/petitioners towards trial and the inherent power of the court should not be exercised to stifle a legitimate prosecution (in the words of the Supreme Court).

14. In the present case there is substance in the allegations and material exists to prima facie make out the complicity of the applicant in a cognizable offence and as such the

proceedings in this case should not be quashed and this is a fit case where the inherent powers of the Court should not be exercised.

- 15. CRR 3859 of 2022 is dismissed.**
- 16.** All connected Applications, if any, stand disposed of.
- 17.** Interim order, if any, stands vacated.
- 18.** Copy of this order be sent to the learned Trial Court for necessary compliance.
- 19.** Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)