

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.R. 3640 of 2011
With
CRAN 1/2012**

**Ajoy Sarkar & Ors.
-Vs-
State of West Bengal & Anr.**

For the Petitioners	: Mr. Aniket Mitra
For the Opposite Party No. 2	: Mr. Gangadhar Das Mr. Tanmay Chattopadhyay
Heard on	: 31.08.2023, 12.10.2023
Judgment on	: 10.01.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by petitioners for quashing of the proceedings of G.R. Case No. 358 of 2008, arising out of English Bazar Police Station Case No. 53 of 2008 dated 15.02.2008 under Sections 498A/34 of the Indian Penal Code, pending before the Court of the Learned Chief Judicial Magistrate, Malda.
2. Petitioner No. 1 is the elder brother-in-law of the de-facto complainant/opposite party no. 2, the petitioner no. 2 is the mother-in-law of the opposite party no. 2 while the petitioner no. 3 is the married sister-in-law of the opposite party no. 2.

Petitioner No. 1 is working as a Medical Officer at Habra State General Hospital, North 24 Parganas and is residing since the year 2006 at the address mentioned in the cause title hereinabove with his family members who comprises of his wife and child.

Petitioner No. 2 is an aged lady, suffering from various ailments.

Petitioner No. 3 is residing separately at the address as mentioned hereinabove since the last 18 years with her husband, Manoj Kumar Roy.

3. A petition of complaint was filed the opposite party no. 2 before the Court of the Learned Chief Judicial Magistrate, Malda therein alleging commission of an offence by the petitioners punishable under Sections 498A/34 of the Indian Penal Code. In the said petition of complaint the complainant/opposite party no. 2 prayed for a direction from the Learned Magistrate in terms of the provisions of Section 156(3) of the Code of Criminal Procedure upon the Officer-in-Charge of English Bazar Police Station to treat the said petition of complaint as First Information Report and cause investigation thereon. The Learned Chief Judicial Magistrate, Malda upon receipt of the said petition of complaint was pleased to issue a direction upon the Officer-in-Charge of Malda Police Station to cause investigation into the allegations made in the said petition of complaint after treating the said petition of complaint as First Information Report. Pursuant to the direction given by the Learned Magistrate, English Bazar Police Station Case No. 53 of 2008 dated 15.02.2008 under Sections 498A/34 of the Indian Penal code was registered for investigation.

The allegations leveled in the said petition of complaint were inter alia to the effect that the de-facto complainant/opposite party no. 2 was married to Aloke Sarkar on 06.02.2007 as per Hindu rites and customs. After a few days of the marriage the accused Aloke Sarkar, along with other co-accused persons started inflicting torture upon her both physically and mentally to bring cash to the tune of Rs. 1 lakh and 5 bhoris of Gold Ornaments from her paternal home, in spite of the fact during the marriage cash of Rs. 1 lakh along with furniture like Television, Refrigerator etc. were given in favour of the opposite party no. 2.

It had been alleged that with the passage of time torture increased and ultimately on 20.06.2007 the accused persons allegedly drove out the complainant from their rental house at Mahesh Mati, Police Station English Bazar, Malda, for which the complainant had been admitted to the hospital and was treated there till 22.06.2007.

It was also alleged that on 10.11.2007 the complainant/opposite party no. 2 along with her father, went to Uttar Para at her matrimonial house but the accused persons refused to provide shelter unless their demands were fulfilled. Thereafter she informed the Officer-in-Charge of the concerned Police Station however since no action was taken, she lodged the instant petition of complaint under Section 156(3) of the Code of Criminal Procedure.

4. After completion of a purported investigation the Investigating Agency submitted its report in final form vide Charge-Sheet No. 127/2008 dated

30.04.2008 under Sections 498A/34 of the Indian Penal Code against the petitioners and other accused persons.

5. On the basis of the Charge-Sheet submitted by the Investigating Agency, the Learned Chief Judicial Magistrate, Malda was pleased to take cognizance of the offence mentioned in the Charge-Sheet on 14.05.2008.
6. The respective Learned Advocates for the petitioners as well as the opposite party no. 2 expressed their rival contentions vividly.
7. Petitioners stated being apprehensive of arrest in connection with instant case, the petitioners filed an application under Section 438 of the Code of Criminal Procedure before the Court of the Learned Sessions Judge, Malda being Criminal Misc Case No. 390 of 2008 and were granted anticipatory bail by the Learned Sessions Judge, Malda.
8. Petitioners stated that the de-facto complainant namely Aparna Sarkar used to live separately with her husband Alope Sarkar in a separate tenanted accommodation at Mahesh Mati, Malda since their marriage as the husband used to work at Malda. The Petitioner No. 1 works as a Medical Officer of Habra State General Hospital. Petitioner No. 2 is a house wife, residing at Uttar Para and the Petitioner No. 3 is the married sister-in-law of the de-facto complainant/opposite party no. 2 who used to reside with her husband at 25, Bazar Lane, Uttar Para since the last 18 years. Therefore, the allegations of inflicting torture upon her by the petitioners do not and cannot arise.

9. It was further stated that the allegations of the opposite party no. 2 in the petitioner of complaint under Section 156(3) of the Code of Criminal Procedure were false and frivolous inasmuch as in the petitioner under Section 156(3) of the Code of Criminal Procedure the de-facto complainant/opposite party no. 2 stated that she was driven out from the rented residence at Mahesh Mati on 20.06.2007. However, in the Divorce Petition filed before the Court of the Learned District Judge, Malda on 15.02.2008 in Mat Suit No. 51 of 2008, the same de-facto complainant stated that on 17.04.2007 she was driven out of the rented house and since then she was residing at her paternal home at Mission Road, Malda.
10. Petitioners submitted that the allegation of demand of dowry to the tune of Rs. 1 lakh was false inasmuch as in the execution proceedings arising out of the petition under Section 125 of the Code of Criminal Procedure giving rise to execution Case No. 99/M of 2010, the de-facto complainant/opposite party no. 2 claimed a sum of Rs. 22,500/- from her husband which was paid by her husband. The present petitioners had no role to play and were in no way involved.
11. According to the First Information Report the opposite party no. 2 was driven out of her matrimonial home on 20.06.2007 and the application under Section 156(3) of the Code of Criminal Procedure was filed in the Court of the Learned Chief Judicial Magistrate, Malda on 16.11.2007 and no cogent reason has been attributed for such inordinate delay of 5 months in lodging the said complaint.

12. Petitioners submitted that the de-facto complainant/opposite party no. 2 resided with her husband, Alope Sarkar at a separate mess at Mahesh Mati, Malda since her marriage which was apparent from the letters dated 25.04.2007 written by Alope Sarkar, one addressed to the landlord of the said premises wherein he expressed his willingness to vacate the said premises and the other address to the father of the opposite party no. 2 where he requested his father-in-law to take away the articles of the opposite party no. 2 kept in the rented house. Such letters evince that the de-facto complainant/opposite party no. 2 resided separately with her husband and the allegations if at all, for the sake of argument were accepted to be correct, it was the husband of the opposite party no. 2 who alone was responsible for the offences as alleged and not the petitioners who were residing separately at different places.

13. The Learned Advocate for the petitioners relied on the decisions cited in **K. Subba Rao and Others vs. State of Telangana Represented by Its Secretary, Department of Home and Others**¹, wherein the Hon'ble Supreme Court held the following:-

“5. A perusal of the charge-sheet and the supplementary charge-sheet discloses the fact that the appellants are not the immediate family members of the third respondent/husband. They are the maternal uncles of the third respondent. Except the bald statement that they supported the third respondent who was harassing the second respondent for dowry and that they conspired with the third respondent for taking away his child to

¹ (2018) 14 SCC 452

the U.S.A., nothing else indicating their involvement in the crime was mentioned. The appellants approached the High Court when the investigation was pending. The charge-sheet and the supplementary charge-sheet were filed after disposal of the case by the High Court.

6. Criminal proceedings are not normally interdicted by us at the interlocutory stage unless there is an abuse of the process of a court. This Court, at the same time, does not hesitate to interfere to secure the ends of justice. See *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . The courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out. See *Kans Raj v. State of Punjab* [*Kans Raj v. State of Punjab*, (2000) 5 SCC 207 : 2000 SCC (Cri) 935] and *Kailash Chandra Agrawal v. State of U.P.* [*Kailash Chandra Agrawal v. State of U.P.*, (2014) 16 SCC 551 : (2015) 3 SCC (Cri) 536]

7. The counsel for the second respondent submitted that certain documents belonging to the second respondent were seized from the appellants which would show their active involvement in the kidnapping of her child. On an overall consideration of the contents of the charge-sheet, supplementary charge-sheet and the submissions made on behalf of Respondent 2, we are of the opinion that a *prima facie* case has not been made out against the appellants for proceeding against them under Sections 498-A, 120-B, 420 and 365 IPC.”

14. The Learned Advocate for the petitioners further placed reliance upon a decision in ***Geeta Mehrotra and Another vs. State of Uttar Pradesh and Another***², wherein the Hon’ble Supreme Court held as follows:

² (2012) 10 SCC 741

“16. Under the facts and circumstances of a similar nature in Ramesh v. State of T.N. [(2005) 3 SCC 507 : 2005 SCC (Cri) 735] , SCC (Cri.) at p. 738, allegations were made in a complaint against the husband, the in-laws, husband's brother and sister who were all the petitioners before the High Court wherein after registration of the FIR and investigation, the charge-sheet was filed by the Inspector of Police in the Court of the IIIrd Judicial Magistrate, Trichy. Thereupon, the learned Magistrate took cognizance of the offence and issued warrants against the appellants on 13-2-2002. Four of the appellant-accused were arrested and released on bail by the Magistrate at Mumbai. The appellants had filed a petition under Section 482 CrPC before the Madras High Court for quashing the proceedings in the complaint case on the file of the IIIrd Judicial Magistrate, Trichy. The High Court by the impugned order dismissed the petition observing that the grounds raised by the petitioners were all subject-matters to be heard by the trial court for better appreciation after conducting full trial as the High Court was of the view that it was only desirable to dismiss the original criminal petition and the same was also dismissed. However, the High Court had directed the Magistrate to dispense with the personal attendance of the appellants.

17. Aggrieved by the order of the Madras High Court dismissing the petition under Section 482 CrPC, the special leave petition was filed in this Court giving rise to the appeals therein where threefold contentions were raised viz.: (Ramesh case [(2005) 3 SCC 507 : 2005 SCC (Cri) 735] , SCC p. 509, para 4)

“(i) that the allegations are frivolous and without any basis;

(ii) even according to the FIR, no incriminating acts were done within the jurisdiction of Trichy Police Station and the Court at Trichy and, therefore, the learned Magistrate lacked territorial jurisdiction to take cognizance of the offence; and

(iii) taking cognizance of the alleged offences at [that] stage [was] barred under Section 468(1) CrPC as it was beyond the period of limitation prescribed under Section 468(2) CrPC.”

Apart from the subsequent two contentions, it was urged that the allegations under the FIR do not make out any offence of which cognizance could be taken.

18. *Their Lordships of the Supreme Court in Ramesh case [(2005) 3 SCC 507 : 2005 SCC (Cri) 735] had been pleased to hold that the bald allegations made against the sister-in-law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible. It was held that neither the FIR nor the charge-sheet furnished the legal basis for the Magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge-sheet, none of the alleged offences under Sections 498-A, 406 IPC and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister-in-law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.*

19. *Insofar as the plea of territorial jurisdiction is concerned, it is no doubt true that the High Court was correct to the extent that the question of territorial jurisdiction could be decided by the trial court itself. But this ground was just one of the grounds to quash the proceedings initiated against the appellants under Section 482 CrPC wherein it was also alleged that no prima facie case was made out against the appellants for initiating the proceedings under the Dowry Prohibition Act and other provisions of IPC. The High Court has failed to exercise its jurisdiction insofar as the consideration of the case of the appellants is concerned, who are only*

brother and sister of the complainant's husband and are not alleged even by the complainant to have demanded dowry from her. The High Court, therefore, ought to have considered that even if the trial court at Allahabad had the jurisdiction to hold the trial, the question still remained as to whether the trial against the brother and sister of the husband was fit to be continued and whether that would amount to abuse of process of court.

20. Coming to the facts of this case, when the contents of the FIR are perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names which have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

21. It would be relevant at this stage to take note of an apt observation of this Court recorded in *G.V. Rao v. L.H.V. Prasad* [(2000) 3 SCC 693 : 2000 SCC (Cri) 733] wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that: (SCC p. 698, para 12)

“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."

The view taken by the Judges in that matter was that the courts would not encourage such disputes.

22. *In yet another case reported in B.S. Joshi v. State of Haryana [(2003) 4 SCC 675 : 2003 SCC (Cri) 848 : AIR 2003 SC 1386] it was observed that: (SCC p. 682, para 14)*

"14. There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to [punish the] husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry."

But if the proceedings are initiated by the wife under Section 498-A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent the woman from settling earlier. Thus, for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 CrPC would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power.

23. *In the instant matter, when the complainant and her husband are divorced as the complainant wife secured an ex parte decree of divorce, the same could have weighed with the High Court to consider whether the proceeding initiated prior to the divorce decree was fit to be pursued in spite of absence of specific allegations at least against the brother and sister of the complainant's husband and whether continuing with this proceeding could not have amounted to abuse of process of court. The High Court, however, seems not to have examined these aspects carefully and has thus sidetracked all these considerations merely on the ground that the territorial jurisdiction could be raised only before the Magistrate conducting the trial.”*

15. Considering the efficacious submissions of the Learned Advocates for both the parties and the contentions of the petition and the relevant applications it transpired that petitioner no. 2, viz Usha Rani Sarkar expired on 06.12.2018. A supplementary affidavit filed on 05.10.2023 was annexed with a copy of the death certificate to that effect.
16. The Order No. 13 dated 26.05.2009 passed ex parte by the District Judge, Malda in Matrimonial Suit No. 51 of 2008, dissolved the marriage between opposite party no. 2 and her husband wherein the husband was held liable for inflicting cruelty and torture upon the opposite party no. 2, exclusively.
17. Evidently, the petitioner no. 1 and 3 being the in-laws, residing at separate mess and address did not portray in specific overt act in explicable terms to be indicted. The proclivity of implicating all the family members of the husband who are remotely or in no way connected with the matrimonial life/ domestic life of the wife should be deprecated. The deplorable state of such

family members to undergo the trial, tribulations, agony and disrepute is abhorrent and abominable, therefore should be nipped in the bud.

18. Under such facts and circumstances, the proceedings of G.R. Case No. 358 of 2008, arising out of English Bazar Police Station Case No. 53 of 2008 dated 15.02.2008 under Sections 498A/34 of the Indian Penal Code, pending before the Court of the Learned Chief Judicial Magistrate, Malda is quashed.

19. Accordingly, the instant criminal revisional application being CRR 3640 of 2011 stands disposed of. Connected application, if there be any, also stands disposed of.

20. There is no order as to costs.

21. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.

22. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.).