

29.04.2024
Serial no.6
Aloke
Ct. No. 30

**CRR 4095 of 2022
with
IA No. CRAN 3 of 2024**

**Raju Arya & Anr.
vs.
The State of West Bengal & Anr.**

For the Petitioners : Mr. Mujibar Ali Naskar.

For the State : Mr. Arijit Ganguly,
Ms. Sayanti Santra.

For the Opposite Party No.2 : None.

1. The State has filed a report showing that the opposite party no. 2 has been duly served. But in spite of due service, there is no representation on behalf of the opposite party no. 2.
2. Affidavit-of-service filed be kept with the record.
3. CRAN 3 of 2024 is filed praying for extension of interim order. At the stage of prayer for extension of interim order the revision is also taken up for final hearing. As the parties are ready for the hearing the State has placed the case diary along with the memo of evidence.
4. The present revisional application has been preferred praying for quashing of the proceeding being A.C.G.R. Case No. 3497 of 2020 arising out of Sarsuna P.S. Case No. 78 of 2020 dated 11.08.2020 under Sections 498A/406/506-II/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, pending before the learned Judicial Magistrate, 9th Court, Alipore.
5. The petitioners' case is that the petitioner no. 1 is the father-in-law and the petitioner no. 2 is the mother-in-law and they

are residents of Fatepur, Uttar Pradesh, as the petitioner no. 1 is a Grade-I officer in Bank of Baroda at Fatepur, U.P. opposite party no. 2/complainant is the granddaughter of aunt (masi) of the petitioner no. 1 and has married the son of the petitioner on 22.02.2019.

6. It is the case of the petitioners that the opposite party no. 2 was married earlier (twice) and in those marriages also she filed cases under Section 498A of the Indian Penal Code against her husband and in-laws. The relationship in this case was not accepted by the petitioners and his family members.
7. Petitioner no. 1 being aggrieved with the conduct of his elder son registered a Will on 24.08.2019 wherein he stated that after his death his wife/petitioner no. 2 and his younger son Abhishek Arya will get the entire property. The husband of the opposite party would have no right, title and interest in the petitioner no.1's property.
8. The present case was then registered on 11.08.2020 after almost one year of registration of the said Will by the opposite party no. 2/wife of the elder son of the petitioner.
9. **The petitioners have relied upon the following judgments:-**
 1. **(2022) 6 SCC 599 (Kahkashan Kausar alias Sonam & Ors. vs. State of Bihar & Ors.)**
 2. **(2010) 7 SCC 667 (Preeti Gupta & Anr. vs. State of Jharkhand & Anr.).**
10. On perusal of the written complaint at page 48 of the revisional application, it appears that after her marriage, her in-laws allegedly came to Kolkata at the opposite party no. 2's

residence and inflicted mental and physical torture upon her by demand of dowry and subsequently fled away with gold ornaments and a sum of Rs.3 lakhs. The opposite party no. 2 further states that the family members are trying to kill her by hiring the superi killer with the help of local political leaders.

11. Considering the materials in the case diary including the statement of the parents of the de facto complainant, it appears that the statement of the complainant that the petitioner had come to her Kolkata residence is not substantiated by the statements of even the parents of the opposite party no. 1 who have also made general statements stating that after her marriage she was inflicted with torture for demand of dowry.
12. As such, there is no prima facie materials to show that petitioners ever lived with the de facto complainant as such it prima facie appears that it is because of the Will being executed by the petitioner no. 1 leaving out the husband of the opposite party no. 2 from being as beneficiary, that the opposite party no. 2 has registered the present case as an act of revenge.

13. Section 498A of the Indian Penal Code, 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 purposes 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 Section 498A are as follows:-*

(1) A woman was married;

(2) She was subjected to cruelty;

(3) Such cruelty consisted in —

(i) Any willful 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.”

14. In *Abhishek vs State of Madhya Pradesh, Criminal Appeal*

No. 1456 of 2015 & Criminal Appeal No. 1457 of 2015,

on August 31, 2023, the Supreme Court held:-

“11. This being the factual backdrop, we may note at the very outset that the **contention** that the appellants' quash petition against the FIR was liable to be dismissed, in any event, as the chargesheet in relation thereto was submitted before the Court and taken on file, **needs mention only to be rejected.**

It is well settled that the High Court would continue to have the power to entertain and act upon a petition filed under Section 482 Cr.P.C. to quash the FIR even when a chargesheet is filed by the police during the pendency of such petition [See *Joseph Salvaraj A. vs. State of Gujarat and others* {(2011) 7 SCC 59}]. This principle was reiterated in *Anand Kumar Mohatta and another vs. State (NCT of Delhi), Department of Home and another* [(2019) 11 SCC 706]. This issue, therefore, needs no further elucidation on our part.

12. The contours of the power to quash criminal proceedings under Section 482 Cr.P.C. are well defined. In **V. Ravi Kumar vs. State represented by Inspector of Police, District Crime Branch, Salem, Tamil Nadu and others [(2019) 14 SCC 568]**, this Court affirmed that where an accused seeks quashing of the FIR, invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint.

In **M/s. Neeharika Infrastructure (P). Ltd. vs. State of Maharashtra and others [Criminal Appeal No.330 of 2021, decided on 13.04.2021]**, a 3-Judge Bench of this Court elaborately considered the scope and extent of the power under Section 482 Cr.P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare cases, such standard not being confused with the norm formulated in the context of the death penalty.

It was further observed that while examining the FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, and more particularly, the parameters laid down by this Court in **R.P. Kapur vs. State of Punjab (AIR 1960 SC 866)** and **State of Haryana and others vs. Bhajan Lal and others [(1992) Supp (1) SCC 335]**, the Court would have jurisdiction to quash the FIR/complaint.

13. Instances of a husband's family members filing a petition to quash criminal proceedings launched against them by his wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty abound on this score. We may now take note of some decisions of particular relevance. Recently, in **Kahkashan Kausar alias Sonam and others vs. State of Bihar and others [(2022) 6 SCC 599]**, this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC.

Noting that the foremost issue that required determination was whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial disputes. This Court observed that false implications by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked, would result in misuse of the process of law.

On the facts of that case, it was found that no specific allegations were made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict severe scars upon the accused and such an exercise ought to be discouraged.

14. In *Preeti Gupta and another vs. State of Jharkhand and another* [(2010) 7 SCC 667], this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed 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, as allegations of harassment by husband's close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection.

15. Earlier, in *Neelu Chopra and another vs. Bharti* [(2009) 10 SCC 184], this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the 'be all and end all' of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that offence. These observations were made in the context of a matrimonial dispute involving Section 498A IPC.

16. Of more recent origin is the decision of this Court in *Mahmood Ali and others vs. State of U.P. and others* (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023) on the legal principles applicable apropos Section 482 Cr.P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.P.C. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely.

It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the

record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

17. In *Bhajan Lal (supra)*, this Court had set out, by way of illustration, the broad categories of cases in which the inherent power under Section 482 Cr.P.C. could be exercised. Para 102 of the decision reads as follows:

'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 Act concerned (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 Act concerned, 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.”

- 15.** The present case falls under **clause 7 of Para 102 of Bhajan Lal (Supra).**
- 16.** The allegations in the written complaint are general in nature and do not make out even a prima facie case against the petitioners in respect of the offences alleged.
- 17.** There are no materials on record to show that the ingredients required to constitute the offences alleged are present against any of the petitioners and permitting such a case to proceed towards trial will be an abuse of the process of law and as such the proceeding is liable to be quashed.
- 18. CRR 4095 of 2022 is allowed.**
- 19.** The proceeding being A.C.G.R. Case No. 3497 of 2020 arising out of Sarsuna P.S. Case No. 78 of 2020 dated 11.08.2020 under Sections 498A/406/506-II/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, pending before the learned Judicial Magistrate, 9th Court, Alipore, **is hereby quashed in respect of the petitioners.**
- 20.** All connected Applications, if any, stand disposed of.
- 21.** Interim order, if any, stands vacated.
- 22.** Copy of this order be sent to the learned Trial Court for necessary compliance.

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

(Shampa Dutt (Paul), J.)