

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 4329 of 2022

**Subham Roy Choudhury
Vs
The State of West Bengal & another.**

For the petitioner : Mr. Ajoy Roy Choudhury

For the Opposite party no.2 : Mr. Sabyasachi Mukherjee
Mr. Bibek Dey
Mr. Syed Neaz Ahmed
Mr. Mukesh Khanan
Mr. Mrinmoy Nandi

Heard on : 15.01.2024

Judgment on : 01.02.2024

Ajoy Kumar Mukherjee, J.

1. This is an application under section 482 read with section 401 of the Code of Criminal Procedure 1973 (hereinafter called as Code) wherein petitioner has sought for quashing all impugned proceedings and orders passed in Misc. Case no. 515 of 2016 under Section 125 of the Code, in consequence of the judgment dated 8th July, 2022 passed by this High Court in ACGR case no. 4107 of 2016, discharging the petitioner from the offences under section 498-A/406 and 34 of the Indian Penal code 1860 (IPC).

2. Petitioner contended that a purported marriage was held on 22.02.2016 in between the petitioner and the opposite party No.2 herein and the wife opposite party stayed only for 7 days in two phases in her matrimonial home and ultimately left matrimonial home on 03.03.2016

3. Petitioner's further case is that the petitioner thereafter filed a suit for declaring nullity of said purported marriage and immediate after getting notice of that suit, as a counter blast, the opposite party/wife started harassing the petitioner and his family members with false and fabricated allegations.

4. The opposite party/wife lodged an FIR on 12.07.2016 against the petitioner under section 498A, 406 and 34 IPC and also filed present case seeking maintenance under section 125 of the Code on 15.07.2016. Petitioner further submits that it is evident that the allegations regarding cruelty levelled against the petitioner herein in the aforesaid two cases i.e. in the FIR being no. 424 dated 12.07.2016 and the present maintenance petition being M. 515 of 2016 dated 15.07.2016 are in general same and date wise similar.

5. He further submits that the petitioner preferred an application under section 482 of the Code for quashing the aforesaid FIR No. 424 dated 12.07.2016 and this Court by its judgment dated 8th July, 2022 allowed the prayer of the petitioner and thereby quashed the aforesaid criminal proceeding being FIR No. 424 dated 12.07.2016 with the observation that the allegations made in the written complaint are not only vague and omnibus but also bereaved of any specific detail and has been attributed against the present petitioner in furtherance of general and omnibus

allegations which are not at all sufficient to form an opinion that there is ground for presuming that the present petitioner have committed any offence far from committing offence either under section 498-A or under section 406 of IPC and there is reason to believe that the veiled object behind the lame prosecution is the counter blast of the matrimonial suit filed by the petitioner and with an object to rope the present petitioner due to her matrimony discord.

6. Petitioner further submits that from the aforesaid judgment it has been well established that the opposite party has made allegations falsely in her present application under section 125 of the Code that she was physically or mentally tortured at her matrimonial home or that she was subjected to dowry harassment by the petitioner or that her husband tortured her or drove her out from his house. On the contrary, it has been proved from her averment that she left her matrimonial home of her own accord with her father on 3.3.2016 evening for some medical test.

7. Mr. Roy Chowdhury learned counsel appearing on behalf of the petitioner further submits that the status of husband and wife has not yet been established since it was a pre-planned fraud marriage arranged by the opposite party and for which petitioner has filed aforesaid matrimonial suit for declaring the marriage as nullity. He further submits that all the allegations of cruelty and dowry harassment in the petition in M. Case No. 515 of 2016 made by the opposite party herein against the petitioner being date wise similar to those of the complaint made in FIR and it has been established from the judgment passed by the High Court that opposite party

has made false allegations swearing affidavit in her petition filed under section 125 Cr.P.C.

8. Accordingly Mr. Roy Chowdhury submits that the aforesaid maintenance petition filed on the basis of false allegations of cruelty, physical and mental torture and/or dowry harassment against the petitioner without exposing her education, working capability and living standard, is not maintainable in the eye of law and in this context he relied upon following judgments in

(a) Manmohan Singh Vs. Smt. Mahindra Kaur, reported in **1976 Cri. L.J. 1664.**

(b) Debnarayan Halder Vs. Smt. Anushree Halder reported in **AIR 2003 SC 3174.**

(c) Smt. Mamata Jaiswal Vs. Rajesh Jaiswal, reported in **II (2000) DMC 170.**

(d) Pooja Gour Vs. Shri Umit @ Pinky Patel.

(e) Rishi Pal Vs. Luxmi Devi and another.

9. Mr. Roy Chowdhury in support of petitioner's prayer made under section 482 of the Code contended that the object of section 125 of the Code is to prevent vagrancy and destitution of a hapless lady which is not at all applicable in the present context and accordingly continuance of aforesaid proceeding being M 515 of 2016 would be an abuse of process of law and court and as such he has prayed for quashing the aforesaid maintenance proceeding.

10. Mr. Sabyasachi Mukherjee learned counsel appearing on behalf of the opposite party submits that the petitioner has not filed affidavit of assets

and liabilities in compliance with direction made by Apex Court in ***Rajnish Vs. Neha*** reported in **2021 (2) SCC 324**. He further pointed out that the petitioner in his application seeking quashing of maintenance proceeding but has not mentioned the grounds specifically on which he is seeking for quashing. He further contended that merely because wife is highly educated or her parents are rich, cannot be ground to observe that the opposite party wife is able to maintain herself. In this context he relied upon the judgment of

a) **Sailoja Vs. Khobbanna** reported in **AIR 2017 SC 1174**.

b) **Sunita Kachwaha and others Vs. Anil Kachwaha** reported in **AIR 2015 SC 554**.

c) **Sanjay Damodar Koley Vs. Kalyani Sanjay Koley** reported in **AIR 2020 SCC OnLine Bom 694**.

d) **Dr. Swapan Kumar Banerjee Vs. The State of West Bengal** reported in **AIR 2019 SC 4748**.

11. In this context he further contended, whether the wife/opposite party herein is entitled to get maintenance or not can only be decided after trial since opposite party has raised various triable issues in the aforesaid maintenance proceeding. In such view of the matter the maintenance proceeding initiated by the petitioner who is an unemployed lady and unable to maintain herself is not liable to be quashed at its threshold.

12. I have considered submissions made by both the parties.

13. The main grounds upon which the petitioner has sought for quashing of the maintenance proceeding under section 125 Cr.P.C. are as follows as appearing from the submissions made by the petitioner.

- (i)** That after receiving summon in respect of the suit filed by the petitioner for nullity of marriage the opposite party/wife filed two cases one under section 498A /406/34 of IPC and present proceeding under section 125 of the Code on the self-same allegation. This court on the basis of petitioner's prayer has already quashed the criminal proceeding with certain observation and which clearly established that no amount of cruelty or torture or harassment was inflicted upon the opposite party/wife by the petitioner or his family members at any point of time.
- (ii)** Opposite party wife is highly educated women having a professional MBA degree from a reputed institute of the country and she is capable of working at ease.
- (iii)** The opposite party wife belongs to a rich family, lives in an Air Conditioned luxurious flat and owning personal car and driver and is a single child whose father was an employee of Air Port Authority of India and for which the question of vagrancies and destitution as envisaged under section 125 Cr.P.C. is not at all applicable for the opposite party herein.
- (iv)** Status of husband and wife in the instant case is not yet been established since according to petitioner it's a pre-planned marriage arranged by the opposite party and as such opposite party cannot claim herself as wife of the petitioner herein.
- (v)** Opposite party falsely alleged under sworn in affidavit in the maintenance petition that she was physically and mentally

tortured at her matrimonial home and she was subject to dowry harassment and that her husband tortured her and ultimately drove her out from her matrimonial house. Such statements made on oath by the petitioner has been proved as false as she herself averred that she left her matrimonial home of her own accord with her father on 03.03.2016 evening for some medical test.

14. Needless to say that the main object of introducing section 498A in I.P.C is to combat with the menace of dowry death and cruelty. What is 'cruelty' has been defined in the explanation to section 498A which says that the prosecution has to establish firstly the wilful conduct of the offender secondly that the nature of such conduct was likely to drive a women to commit suicide or to cause grave injury or danger to life or limb (whether mental or physical). Accordingly if it is not conclusively established that beating and harassment was with a view to force her to commit suicide or to fulfil illegal demands of the husband and in laws, the provisions of section 498A would not be attracted to make out a case of cruelty. Accordingly the degree of intensity of conduct on the part of the accused to constitute cruelty as defined in the said section is to be proved beyond reasonable doubt and it is not enough that conduct of the accused is wilful and is offensively unjust to the women. The words 'wilful conduct' in the first clause of the explanation makes it clear that anything done or having happened accidentally or negligently cannot be treated as cruelty.

15. On the other hand the ingredients for filing an application for maintenance is something different. Said provision under chapter IX of the

Code of Criminal Procedure provides that in cases where husband has sufficient means neglects or refuses to maintain his wife who is unable to maintain herself, she is entitled to maintenance upon proof of such neglect or refusal. Here the term “neglects” or “refuses” is important. “Neglect” means the fact of disregarding or paying no attention to a person. To disregard or to treat with no regard or attention or with too little to treat with respect are treated as neglect. The dictionary meaning of the word “refuses” is declines. Thus the word “refuses” implies and connotes a positive idea or positive act of not conceding to a proposal made legitimately. According to that section neglect or refusal is a *sine qua non* for a wife to be entitled to maintenance from the husband. However refusal or neglect can be express or implied and it can be by words or by conduct. There can be different shades of neglect or refusal and without trial it is hardly possible to conclude as to whether there was any refusal or neglect or not at this budding stage of the proceeding.

16. In the case in hand, in her application under section 125 of the Code of Criminal Procedure the wife/opposite party herein made specific allegations in paragraph 4 to 14 in order to prove her case of refusal or neglect on the part of the Petitioner/Opposite party and that she has been unjustly deserted. In this context it is to be mentioned that the conduct of wife/opposite party during her stay at her matrimonial house may not be the sole parameter to be considered before granting maintenance under 125 Cr.P.C. Said provision being a welfare legislation is not supposed to be construed what is likely to be construed to prove a case beyond reasonable doubt under section 498A I.P.C. or Under Section 406 of the IPC.

17. It is true that the petitioner herein challenging the legality and validity of the marriage has filed a suit which is pending before competent court of law but the opposite party wife in her application in paragraph 3 has categorially stated that the marriage was registered under the special Marriage Act 1954 and at the same time formalities of Hindu Marriage was also observed on 22.02.2016 and 24.02.2016. Accordingly unless and until the said marriage has been declared as null and void by a competent court of law, there is no bar to describe opposite party herein as 'wife' of the petitioner.

18. In support of quashing the said proceeding under section 125 of the Code, the petitioner herein has taken a specific plea that the opposite party/wife is highly qualified and capable of working at ease. There is a difference between 'capable of earning' and 'actually earning' which has been highlighted in ***Sailoja and others Vs. Khobanna (supra)*** wherein the court held women who are qualified to earn would not be barred from claiming maintenance. Moreover, since no evidence has yet been adduced in the present case it cannot be assumed at this stage that the Opposite party/wife qualified to earn, is in fact earning as held in ***Swapan Kumar Banerjee Vs. The state of West Bengal and others (supra)***. In ***Rajnish Vs. Neha (supra)*** the Apex Court laid down guidelines for determination of maintenance and in that judgment it has been decisively established that even if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The duty of the court is to look at the income she is earning in and of itself and from that to determine whether or not she is capable of sustaining herself in the manner and lifestyle to which she is

accustomed to in the husband's house. This ratio has been reiterated in subsequent judgment in ***Sunita Kachwaha and others Vs. Anil Kachwaha (supra)*** which states that the mere fact that the wife was earning some income could not be enough to disentitle to her from her right to maintenance. Relying upon this judgment Bombay High Court in ***Sanjoy Damodar Kale Vs. Kalyan Sanjan kale (supra)*** held that neither the potential to earn nor the meagre earning of the wife would have any bearing upon her right to maintenance.

19. The case law cited by the petitioner in ***Manamohan Singh (supra)*** is factually different as in the present case wife opposite party specifically averred in para 15 of her application that petitioner/wife does not have any independent income, which was not there in aforesaid cited case. The other case laws are also not applicable in the present context, since they are factually different and prayer has not been made to quash Section 125 proceeding in those cases at the threshold.

20. In the case of ***state of Haryana Vs. Bhajanlal*** reported in **AIR 1992 SC 604** Apex Court has clearly laid down the cases where a criminal proceeding can be quashed. Judging the present case in the touchstone of the principles laid down in paragraph 108 of in the said judgment, I find that this is not a fit case where invoking jurisdiction under section 482 of the Code of Criminal procedure the present proceeding, can be quashed on the basis of the judgment passed in favour of the petitioner wherein criminal proceeding under section 498A/406/34 was quashed.

21. Learned counsel for the opposite party in this context has also drawn my attention to an order dated 28.07.2023 passed by this High Court in

CRR No. 1832 of 2022 arising out of an-execution proceeding from the aforesaid maintenance case wherein this court held that under no circumstances the trial of present maintenance case being M. 515 of 2016 be further stalled and the same should be taken to its logical conclusion within a reasonable period of time and completed within a year from the date of communication of the order before the learned Trial Court and this court refused to interfere in the said Revisional Application to quash or set aside or stay the execution petition being M. Ex 67 of 2022 arising out of the present maintenance case being M.515 of 2016 till disposal of perjury proceeding at the court below.

22. In view of aforesaid discussion **CRR 4329** of **2022** is dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(AJAY KUMAR MUKHERJEE, J.)