

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

CRR 4439 OF 2022

BANDANA SARKAR & ORS.
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Sabir Ahmed,
Mr. Sunil Gupta,
Mr. Shraman Sankar,
Mr. Tasnim Ahmed,
Mr. Dhiman Banerjee,
Mr. Quazi Ezaz Ahmed.

For the State : Mr. Sandip Chakraborty,
Mr. Saryati Datta.

For the State Legal Services Authority on behalf of the O.P. No. 2 : Ms. Soma Chowdhury (Bandhu).

Hearing concluded on : 28.11.2024

Judgment on : 13.12.2024

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of the proceedings being GR case no.114 of 2022 arising out of Maniktala PS case no.14 of 2022 dated 13.01.2022 under Sections 498A/406/34 of the Indian Penal Code read with Sections 3/4 of the Dowry Prohibition Act pending before the learned Additional Chief Judicial Magistrate at Sealdah.
2. The petitioner no.1 is the mother-in-law and petitioner nos. 2 and 3 are other relatives of the husband of the complainant. The present case has been initiated on the basis of a written complaint dated 13.01.2022.
3. In the said written complaint, the complainant has alleged that she was married to one Rahul Sarkar on 30th November, 2006. The present complaint has been filed in the year 2022, i.e., **after 18 years of marriage**. A child was born out of the marriage in 2007. It is now stated that her husband is a drug addict and has affairs with other women and the petitioners along with her husband are regularly inflicting torture upon her demanding dowry.
4. Legal notice was sent by the petitioner no. 1 to the de facto complainant herein, on 09.12.2021, giving notice to vacate the house of the petitioner no.1, as she was being continuously

tortured by the de facto complainant and the petitioner no.1 being the absolute owner of the said residential property.

5. **It prima facie appears that they after receiving the legal notice for eviction dated 09.12.2021, the petitioner initiated the present case by filing written complaint on 13.01.2022. It clearly appears that the said complaint is a fall out of a notice of eviction** which was served upon the de facto complainant and her husband (petitioner no. 1's son) for regular torture upon the petitioner no.1.
6. On perusal of the materials in the case diary, it appears that there is no injury report, though the allegations talks of assault.
7. The defacto complainant has initiated several cases after being married for 18 years. The allegations are general in nature and prima facie initiated out of malice.
8. In ***Dara Lakshmi Narayana & Ors. vs State of Telangana & Anr., in Criminal Appeal No. of 2024 (arising out of SLP (Criminal) No. 16239 of 2024, decided on December 10, 2024,*** the Supreme Court held:-

“15. An offence is punishable under Section 498A of the IPC when a husband or his relative subjects a woman to cruelty, which may result in imprisonment for a term extending up to three years and a fine. The Explanation under Section 498A of the IPC defines “cruelty” for the purpose of Section 498A of the IPC to mean any of the acts mentioned in clauses (a) or (b). The first limb of clause (a) of the Explanation

of Section 498A of the IPC, states that “cruelty” means any wilful conduct that is of such a nature as is likely to drive the woman to commit suicide. The second limb of clause (a) of the Explanation of Section 498A of the IPC, states that cruelty means any wilful conduct that is of such a nature as to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. Further, clause (b) of the Explanation of Section 498A of the IPC states that cruelty would also include harassment of the woman where such harassment is to coerce 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.

16. Further, Section 3 of the Dowry Act deals with penalty for giving or taking dowry. It states that any person who engages in giving, taking, or abetting the exchange of dowry, shall face a punishment of imprisonment for a minimum of five years and a fine of not less than fifteen thousand rupees or the value of the dowry, whichever is greater. Section 4 of the Dowry Act talks of penalty for demanding dowry. It states that any person demanding dowry directly or indirectly, from the parents or other relatives or guardians of a bride or bridegroom shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees.

18. A bare perusal of the FIR shows that the allegations made by respondent No.2 are vague and omnibus. Other than claiming that appellant No.1 harassed her and that appellant Nos.2 to 6 instigated him to do so, respondent No.2 has not provided any specific details or described any particular instance of harassment. She has also not mentioned the time, date, place, or manner in which the alleged harassment occurred. Therefore, the FIR lacks concrete and precise allegations.

25. A mere reference to the names of family members in a criminal case arising out of a matrimonial dispute, without specific allegations indicating their active involvement should be nipped in the bud. It is a well-recognised fact, borne out of judicial experience,

that there is often a tendency to implicate all the members of the husband's family when domestic disputes arise out of a matrimonial discord. Such generalised and sweeping accusations unsupported by concrete evidence or particularised allegations cannot form the basis for criminal prosecution. Courts must exercise caution in such cases to prevent misuse of legal provisions and the legal process and avoid unnecessary harassment of innocent family members. In the present case, appellant Nos.2 to 6, who are the members of the family of appellant No.1 have been living in different cities and have not resided in the matrimonial house of appellant No.1 and respondent No.2 herein. Hence, they cannot be dragged into criminal prosecution and the same would be an abuse of the process of the law in the absence of specific allegations made against each of them.

28. *The inclusion of Section 498A of the IPC by way of an amendment was intended to curb cruelty inflicted on a woman by her husband and his family, ensuring swift intervention by the State. However, in recent years, as there have been a notable rise in matrimonial disputes across the country, accompanied by growing discord and tension within the institution of marriage, consequently, there has been a growing tendency to misuse provisions like Section 498A of the IPC as a tool for unleashing personal vendetta against the husband and his family by a wife. Making vague and generalised allegations during matrimonial conflicts, if not scrutinized, will lead to the misuse of legal processes and an encouragement for use of arm twisting tactics by a wife and/or her family. Sometimes, recourse is taken to invoke Section 498A of the IPC against the husband and his family in order to seek compliance with the unreasonable demands of a wife. Consequently, this Court has, time and again, cautioned against prosecuting the husband and his family in the absence of a clear prima facie case against them.*

29. *We are not, for a moment, stating that any woman who has suffered cruelty in terms of what has been contemplated under Section 498A of the IPC should remain silent and forbear herself from making a complaint or initiating any criminal proceeding. That*

is not the intention of our aforesaid observations but we should not encourage a case like as in the present one, where as a counterblast to the petition for dissolution of marriage sought by the first appellant-husband of the second respondent herein, a complaint under Section 498A of the IPC is lodged by the latter. In fact, the insertion of the said provision is meant mainly for the protection of a woman who is subjected to cruelty in the matrimonial home primarily due to an unlawful demand for any property or valuable security in the form of dowry. However, sometimes it is misused as in the present case.

30. In the above context, this Court in **G.V. Rao vs. L.H.V. Prasad, (2000) 3 SCC 693** observed as follows:

“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.”

31. Further, this Court in **Preeti Gupta vs. State of Jharkhand (2010) 7 SCC 667** held 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. The allegations of harassment by the husband’s close relatives who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the

complainant are required to be scrutinized with great care and circumspection.

***32.** We, therefore, are of the opinion that the impugned FIR No.82 of 2022 filed by respondent No.2 was initiated with ulterior motives to settle personal scores and grudges against appellant No.1 and his family members i.e., appellant Nos.2 to 6 herein. Hence, the present case at hand falls within category (7) of illustrative parameters highlighted in **Bhajan Lal**. Therefore, the High Court, in the present case, erred in not exercising the powers available to it under Section 482 CrPC and thereby failed to prevent abuse of the Court's process by continuing the criminal prosecution against the appellants."*

- 9.** 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.
- 10.** 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.
- 11. CRR 4439 of 2022 is allowed.**
- 12.** The proceedings being GR case no.114 of 2022 arising out of Maniktala PS case no.14 of 2022 dated 13.01.2022 under Sections 498A/406/34 of the Indian Penal Code read with Sections 3/4 of the Dowry Prohibition Act pending before the learned Additional Chief Judicial Magistrate at Sealdah, **is hereby quashed in respect of the petitioners namely Bandana Sarkar, Patralekha Ghosh and Arunabha Ghosh.**

- 13.** All connected applications, if any, stand disposed of.
- 14.** Interim order, if any, stands vacated.
- 15.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 16.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

[Shampa Dutt (Paul), J.]