

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 4548 of 2022

FARHAT KASEM @ BABY & ANR.

VS.

THE STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Ujjwal Datta,
Mr. Indranuj Datta.

For the State : Ms. Puspita Saha.

For the Opposite Party No.2 : None.

Hearing concluded on : 13.12.2024

Judgment on : 13.12.2024

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of the proceeding in G.R. case no.1888 of 2021 arising out of Beniapukur PS case no.297 of 2021 dated 01.08.2021 under Sections 498A, 406 and 377 read with Section 34 of the Indian Penal Code, 1860 and Sections 3 and 4 of the Dowry Prohibition Act, 1912 pending before the learned Additional Chief Judicial Magistrate at Sealdah, South 24 Paraganas.
2. The allegations against the petitioners herein who are the **husband's uncle and aunt of the de facto complainant** as made out in the written complaint dated 28.07.2021 is that the petitioners would regularly visit the de facto complainant's matrimonial home and humiliate and harass and also insult her and at their instigation, her in-laws mentally and physically tortured her. The said written complaint is a typed application running into six pages.
3. The parties in this case were married in the year 2016 and the case was initiated in the year 2020. From the said petition of complaint it appears that initially the relationship with the de facto complainant in her matrimonial home was more or less normal. Subsequently allegedly the petitioners along with other family members started to demand dowry. The specific allegation in respect of the petitioners is that :-

“.....my aunt-in-law Farhat Kasem @ Baby and her husband Abul Kasem Molla (uncle-in-law) used to come to my matrimonial home regularly and I was humiliated, harassed and insulted like anything due to the torture some activities of my said in-law together with my husband and other in laws. It was very hurting that I used to receive physical assault from my husband at the instigation of my said in laws, apart from mental tortures in recurrence at my matrimonial home. As a matter of fact they are residing in the close vicinity of my matrimonial home as such they are in habit of visiting my matrimonial home almost every day and used to spend night preferably in Saturday/Sunday and they use to joint hand with my husband and didn't hesitate to hurl abusive slangs to me and aiming at my mother.....”

4. It appears from the written complaint that the de facto complainant has made general allegations against several of her in laws in various paragraphs in the written complaint but there is no such allegation against the present petitioners that they had instigated the de facto complainant's in laws to make demand of dowry.

5. Learned counsel for the petitioners has relied upon a certified copy of an order dated 04.05.2023 passed in case no.C-940 of 2022 under the Domestic Violence Act, 2005 by the learned Judicial Magistrate, 9th Court, Alipore wherein it appears that the application challenging the maintainability of the said proceedings filed by the **petitioners herein** was allowed **and the said proceeding under the Domestic Violence Act, 2005 was dismissed in respect of the present petitioners.**
6. 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."*

7. Learned counsel for the State is present with the case diary. On perusal of the materials in the case diary it appears that there are no materials against the present petitioners to substantiate the allegations made in the written complaint.
8. **CRR 4548 of 2022 is allowed.**
9. The proceeding being G.R. case no.1888 of 2021 arising out of Beniapukur PS case no.297 of 2021 dated 01.08.2021 under Sections 498A, 406 and 377 read with Section 34 of the Indian Penal Code, 1860 and Sections 3 and 4 of the Dowry Prohibition Act, 1912 pending before the learned Additional Chief Judicial Magistrate at Sealdah, South 24 Paraganas, **is hereby quashed in respect of the petitioners namely Farhat Kasem @ Baby and Abdul Kasem Molla.**
10. All connected application, if any, stands disposed of.
11. Interim order, if any, stands vacated.

- 12.** Let a copy of the Judgment be sent to the learned trial court at once.
- 13.** Urgent Photostat certified copy of this judgment and order, if applied for, be supplied to the parties expeditiously after complying with all requisite formalities.

[Shampa Dutt (Paul), J.]