

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 4804 of 2022

With

CRAN 7 of 2024

Partha Sarathi Saha

Versus

The State of West Bengal & Another

For the Petitioner : Ms. Payel Mitra, Adv.
Mr. Soumava Santra, Adv.

For the State : Mr. Suman De, Adv.
Ms. Payel Ghosh, Adv.

Heard on : 20.09.2024

Judgment on : 07.10.2024

Ajay Kumar Gupta, J:

1. The petitioner being the husband/accused filed this Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of First Information Report, Charge-Sheet and Order of cognizance taken by the Learned Chief Judicial Magistrate, Barasat, North 24-Parganas in connection with the proceeding arising out of New Town Police Station Case No. 367 dated 11.10.2021 under Sections 498A/406 of the Indian Penal Code, 1860 and Sections 3/4 of the Dowry Prohibition Act, 1961 corresponding to G.R. 3734 of 2021 pending before the Learned Chief Judicial Magistrate, Barasat.

2. The case of the petitioner, in brief, is that on 11.10.2021, a written complaint was lodged by the petitioner's wife, Puja Saha (Ghosh) alleging, *inter alia*, that the complainant married with the petitioner according to Hindu Rites and Customs on 18.11.2015. Since their marriage, she has been subjected to physical and mental torture by the petitioner and her in-laws continuously demanding more dowries. Lastly on 10.10.2021 at about 8.00 am, she was physically assaulted and driven out from her matrimonial home only with single clothing, when she asked to go to her parental house during the Puja on 09.10.2021.

2a. On the basis of the said written complaint, a case has been registered being New Town Police Station Case No. 367 dated 11.10.2021 under Sections 498A/406 of the Indian Penal Code, 1860 and Sections 3/4 of the Dowry Prohibition Act, 1961 solely against the present petitioner. After culmination of investigation, a charge sheet being Charge Sheet No. 3/2022 dated 09.01.2022 was submitted against the present petitioner under Sections 498A/406 of the Indian Penal Code, 1860 and Sections 3/4 of the Dowry Prohibition Act, 1961.

2b. According to the petitioner, no such incident ever occurred with the opposite party no. 2 in her matrimonial home. She was never tortured either by the petitioner or by her in-laws. She voluntarily left the matrimonial home on 10.10.2021 and lodged a false and frivolous complaint against the petitioner and her in-laws due to her personal grudge and wreaks vengeance intending only to harass the petitioner. Despite the said facts, the Investigating Officer, without proper investigation submitted the charge sheet only on the basis of table work and further the Learned Chief Judicial Magistrate, without going through the materials available in the Case Diary, took cognizance against the petitioner which is absolutely unlawful and unsustainable. As such, the petitioner filed this application before the

Hon'ble High Court seeking quashing of the proceedings and same has come up before this Bench for its disposal.

SUBMISSION ON BEHALF OF THE PETITIONER:

3. The learned Advocate appearing on behalf of the petitioner submitted that no sufficient materials were collected during the investigation against the petitioner regarding physical and mental torture upon the opposite party no. 2/wife. The allegation of assault or being driven out is completely false and fabricated. She herself left the matrimonial home even after expiry of six years of her marriage without any sufficient reason or cause. She did not inform the petitioner or in-laws.

3a. It is further submitted that the initiation of such criminal prosecution by the opposite party no. 2 was just driven solely by mala fide intentions aiming to misuse the criminal justice system for her ulterior motive or gain which is nothing but a gross abuse of process of law and no useful purpose would be served by continuing with the said impugned proceeding in the light of criminal justice and it would be treated as meant wreaks vengeance and personal grudge. As such, the impugned proceeding pending before the Learned Trial Court should be quashed for the interest of justice.

3b. Finally, it is submitted that if this Court examines the materials available in the Case Diary, then there is no chance of an ultimate conviction of the petitioner in the instant case as such, no useful purpose is likely to be served by allowing the criminal proceeding to be continued.

3c. In such a situation, the Hon'ble Supreme Court consistently held that the power of the Hon'ble High Courts under Section 482 of the Code of Criminal Procedure, 1973 is not limited and can be invoked to quash a proceeding which is based on false and frivolous allegation to meet the ends of justice and/or on the ground to prevent the abuse of process of the Learned Trial Courts. He prays for quashing of the entire proceeding.

4. On the other hand, none represented the opposite party no. 2. No accommodation was sought for on behalf of the opposite party no. 2, despite service of summons as well as administrative notice upon the opposite party no. 2/wife. Hence, the record is taken up for hearing in her absence.

SUBMISSION ON BEHALF OF THE STATE:

5. The learned counsel appearing on behalf of the State submitted that after completion of the investigation, Charge Sheet has been submitted against the present petitioner under Sections

498A/406 of the Indian Penal Code, 1860 and Sections 3/4 of the Dowry Prohibition Act, 1961. During investigation, the Investigating Officer visited the place of occurrence, examined available witnesses and recorded their statements under Section 161 of the Cr.PC and established a prima facie case only against the present petitioner. Additionally, the streedhan articles were also recovered by the Investigating Officer and same were handed over to the complainant under proper Zimmanama.

5a. In view of the statements of the witnesses and materials available in the case record, the Learned Trial Court rightly took cognizance against the present petitioner when it was found prima facie case against the petitioner. Accordingly, the instant Criminal Revisional application has no merit and is liable to be dismissed. Case Diary also produced by the learned counsel for the State in support of his submission.

DISCUSSIONS AND FINDINGS BY THIS COURT:

6. Heard the submissions made by the learned counsels for the parties and upon perusal of the materials available in the Case Diary, this Court is of the view that the marriage of the opposite party no. 2 and the petitioner held on 18.11.2015. The allegation of the de-facto complainant/wife has been made that since after her marriage, she

was subjected to both physical and mental torture by her husband and her in-laws due to demand of more dowries. On the basis of written complaint, a case was initiated against the present petitioner under Sections 498A/406 of the Indian Penal Code, 1860 and Sections 3/4 of the Dowry Prohibition Act, 1961.

7. Upon careful perusal of the written complaint, it reveals that it is alleged that at the time of marriage, a liquid cash amounting to Rs. 50,000/- along with gold ornaments and utensils was given as per the demands of the petitioner and in-laws and the social marriage was taken place on 18.11.2015. Since after her marriage, the father-in-law demanded to bring the money from her parents for his business purpose and the petitioner and sister-in-law always abused her referring her that she belongs to a lower caste and when she failed to bring the money, she was also assaulted on multiple occasions. She also alleged that she was assaulted on 10.10.2021 at about 8.00 am and driven out with only one piece of clothing.

8. From the perusal of the entire written complaint, it is not found how and who assaulted her. No specific particulars have been disclosed. Furthermore, during investigation, it does not prove that her father-in-law demanded dowry from her. No specific role has been attributed against the present petitioner with regard to torture

or assault even then charge sheet has been submitted by the Investigating Officer.

9. From the perusal of the statements of the witnesses recorded under Section 161 of the Cr.PC, this Court does not repose confidence that the allegations, levelled by the opposite party no. 2/wife, have been supported by any sufficient materials to constitute an offence punishable under Section 498A/406 of the Indian Penal Code, 1860 and Sections 3/4 of the Dowry Prohibition Act, 1961. The accusations made by the opposite party no. 2/wife are general and omnibus in nature. The charge sheet reveals that from 2015 to September 2021, no FIR was lodged by her against the petitioner or her in-laws regarding the allegations of continuous demand of dowries or assault. It is also not found from the evidence collected during the investigation that they had demanded dowries at the time of marriage or thereafter. So, the articles, seized from her matrimonial home, do not specify that those articles were given on the demand by the petitioner or her in-laws.

10. We should not forget at this moment the well-settled Law declared by the Hon'ble Supreme Court in the case of ***State of Haryana & Ors. vs. Bhajanlal & Ors.***¹ which has laid down the

¹ AIR 1992 SUPREME COURT 604 : 1992 Supp. (1) Supreme Court Cases 335

basic points for consideration pursuant to which a complaint may be entertained in accordance with law before a Court of law. The Court has narrated down as to when the extraordinary power of this Court under Section 482 of the Code of Criminal Procedure may be espoused. Relevant portion thereof may beneficially be quoted herein below: -

“102. This Court in the backdrop of interpretation of various relevant provisions of CrPC 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 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that 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 to 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.”

11. In the light of above discussions made by this Court and in view of observation made by the Hon’ble Supreme Court in the above cited judgment, this Court fully satisfies that this case falls in the Categories mentioned in (1), (3), (5) and (7) above.

12. Accordingly, **CRR No. 4804 of 2022** is **allowed**. **CRAN 7 of 2024** and all connected applications, if any, are also, thus, disposed of.

13. Consequently, the proceeding as well as First Information Report, Charge-Sheet and Order of cognizance taken by the Learned Chief Judicial Magistrate, Barasat, North 24-Parganas in connection with New Town Police Station Case No. 367 dated 11.10.2021 under Sections 498A/406 of the Indian Penal Code, 1860 and Sections 3/4 of the Dowry Prohibition Act, 1961 are hereby quashed insofar as the

petitioner is concerned and all orders passed thereof in the said proceeding are also, thus, set aside.

14. Let a copy of this Judgment be sent to the Learned Trial Court for information.

15. Case Diary is to be returned to the learned counsel for the State.

16. Interim order, if any, stands vacated.

17. Parties will act on the server copies of this Judgment uploaded from the official website of this Court.

18. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)