

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1372 of 2020

Ranjeet Mukherjee & Ors.

Vs

The State of West Bengal & Anr.

For the Petitioners

: Mr. Ayan Bhattacharjee,
Mr. Apalak Basu,
Mr. Rohan Chatterjee,
Mr. Saunak Sarbajna.

For the State

: Mr. Debasish Roy, Ld. P.P.
Mr. Arijit Ganguly,
Mr. Bitasok Banerjee.

For the Opposite Party no.2

: Mr. Shyamal Kanti Banerjee,
Mr. Jayanta Datta,
Ms. Nipasri Tagore,
Mr. Ratan Pathak,
Mr. Atanu Mondal.

Hearing concluded on

: 25.04.2024

Judgment on

: 21.05.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings being CGR No. 2130/20 pending before the Court of the Learned Chief Judicial Magistrate at Alipore in connection with Tollygunge Women Police Station Case No. 3 dated 20.06.2020 under Sections 498A/406/34 of the Indian Penal Code and Section 4 of Dowry Prohibition Act and all orders passed therein.
2. The petitioner no. 1 and the petitioner no. 2 & 3 are the husband and in laws of the opposite party no.2.
3. The petitioners state that the petitioner met the opposite party no.2 through a matrimonial site on 15th December, 2019 and after negotiations between the two families, it was decided that a formal “Aashirbad” ceremony will be held on 6th March, 2020 followed by a social marriage and reception on 26th and 28th July, 2020 respectively. Accordingly, banquet was booked, and cards were printed.
4. The petitioners state that during the courtship period, the petitioner no.1 realized that the opposite party no.2 was of suspicious nature and used to throw tantrums without reason. The petitioner no.1 used to initially succumb to her whims only misjudging the same as her ‘being possessive out of love’. However, such behavior started getting further irrational and intolerable and serious arguments took place between the petitioner no.1 and the opposite party no.2. One such

conversation blew out of proportion so much that the petitioner had to call off the alliance by informing the parents of opposite party no.2. That's when on 27th December, 2019 the mother of the opposite party no. 2 called the petitioner no. 1 and asked the petitioner no. 1, if he is not okay with this alliance. The petitioner no.1 replied that they don't seem to be compatible and he doesn't think they can work this out. Then, the parents of the opposite party no.2 immediately called the parents of the petitioner no.1 viz., the petitioner no.2 and 3 in Kolkata and started pressurizing them for the marriage.

5. The petitioners state that though there was a lot of dispute between the parties, an "Aashirbad" ceremony was held on 6th March, 2020, when the opposite party no. 2's family allegedly arranged for the registration of the marriage between the parties herein, where all acts were done relatively by the petitioner no.1. Thereafter the petitioners went to Nepal on 7th March, 2020 for the wedding shopping and the opposite party no.2 accompanied them.
6. They returned on 14th March, 2020, when the opposite party no. 2 left with her parents after they reached Howrah Station.
7. After several other rounds of debate and disputes, on 20.03.2020, the petitioner no.1 informed the father of the opposite party no.2 that he was not going in for the social marriage.
8. On 11.07.2020, the petitioner no.3 lodged a written complaint with the police.

9. On 4th August, 2020, the petitioners came to know that on 19.06.2020 the opposite party no.2 had lodged the written complaint in this case,

stating there in as follows:-

“.....that he complainant’s parents registered her name in a matrimonial site where interest was sent to a profile belonging to the petitioner no.1; the petitioners reciprocated to such interest and started interacting; after prolonged discussions the parties decided to finalize marriage between the petitioner no.1 and the opposite party no.2; thereafter the petitioner no.1 and the opposite party no. 2 herein after referred to as the parties, met and shared private moments by eating at restaurants and watching movies; on 26.12.2019, the petitioner no.1 went back to Bengaluru and continued to remain in touch over phone and Internet and exchanged innumerable passionate telephonic conversations, video interactions, love texts, video calls and chats; subsequently despite facing hardships, the opposite party’s parents fulfilled the demands which came as the petitioners as prescriptive necessity which included costly apparels, jewelleries and other costly items; finally the opposite party no.2 was given a rather sarcastic entry to the petitioners family leading to exchange of garlands and getting married to the petitioner no.1 on 6th March, 2020 after Aashirbad and registration of marriage at Jaymangal Hall at Southern Avenue before a hundred guests invited by the opposite party no.2; the opposite party no. 2’s parents gifted Seiko watch, Sherwani Suit, Gold chain, Diamond ring, Shoes, Punjabi, Suit and shirt to the petitioner no.1; at the time of marriage the opposite party no.2 was also given gold ornaments which the opposite party no.2 entrusted to the petitioner no’s 2 and 3 as per the direction of the petitioner no.1 which were to be returned after honeymoon but was not done till date; thereafter on 07.03.2020, the parties went for honeymoon to Nepal accompanied by her parents-in-law where despite the petitioner no.3’s tantrums, the parties could share room between 8th and 13th March, during such honeymoon, the opposite party no.2 was

deprived of food and asked to sleep with the petitioner no.3 on cold floor; the opposite party no.2 was slapped, scolded and abused both by the petitioners no's 1 and 3 and threatened not to conduct social ceremonies of the opposite party no.2 could not convince her father to yield out Rs. 30,00,000/-, a car and a residential flat in Kolkata; on 14.03.2020, after returning to Kolkata, the opposite party no.2 was asked to go her parental home from the station and return only when the demands are met with; then the opposite party no.2's mother spoke over phone to the petitioner no.3 and learnt that they were leaving for Bengaluru and on 20.03.2020, they confirmed that they will not continue with the alliance if the demands were not met; on 17.03.2020, the parties spoke and the petitioner no.1 misbehaved with the opposite party no.2 and repeated their demands; on and from 21.03.2020, the petitioner no.1 stopped all conversation with the opposite party no.2; all the ornaments, wearing apparel and gifts are retained by the petitioners and the opposite party no.2 has been deserted for over three months; hence the Complaint."

- 10. Thus admittedly the written complaint has been filed three months, after being allegedly deserted.**
- 11.** The petitioner no. 1 states that he has filed a petition for cancellation of the marriage certificate on the ground of nullity as the marriage has not been consummated.
- 12.** Copy of money receipt dated 20th January, 2020 shows that the petitioner had booked the hotel for his part of their social marriage to be held on 28th July, 2020 (Page 29).
- 13.** Copy of the "Aashirbad" Card shows the ceremony was held on 6th March, 2020 (Page- 30).

14. A copy of the train booking slip shows that the petitioner had booked the tickets on 24.02.2020 and the slip does not show the name of the opposite party no. 2 (page 31).
15. At page 32 is a copy of the Ad-hoc Ticket for the opposite party no.2.
16. Mediation was attempted by this Court, which failed due to the opposite party no.2's non participation.
17. Both parties have filed their written notes of Argument.
18. **The petitioners have relied upon the following judgments:-**

- i) *Pritam Ashok Sadaphule & Ors. vs State of Maharashtra & Anr., reported in (2015) 11 SCC 769 [Para 16, 17].*
- ii) *Mamidi Anil Kumar Reddy vs State of Andhra Pradesh & Anr., reported in (2024) SCC OnLine SC 127 [Para 11 to 18].*
- iii) *Kahkashan Kausar alias Sonam & Ors. vs State of Bihar & Ors., reported in (2022) 6 SCC 599 [Para 10 to 14, 17, 18, 21].*
- iv) *Abhishek vs State of Madhya Pradesh, reported in 2023 SCC OnLine SC 1083 [Para 13 to 17].*

19. **The opposite party no. 2 has relied upon the following rulings:-**

- i) *Som Mittal vs Govt. of Karnataka, AIR 2008 SC 1026, decided on 29.01.2008.*
- ii) *Sonu Gupta vs Deepak Gupta & Ors., 2015 (3) SCC 424, decided on 11th February, 2015.*
- iii) *Chilakamarthi Venkateswarlu vs the State of Andhra Pradesh, AIR 2019 SC 3913, decided on 31st July, 2019.*

iv) *M/s. Neeharika Infrastructure Pvt. Ltd. vs State of Maharashtra and Ors.*, in Criminal Appeal No. 330 of 2021, decided on April 13, 2021.

v) *Central Bureau of Investigation vs Aryan Singh Etc.*, in Criminal Appeal Nos. 1025-1026 of 2023, decided on April 10, 2023.

20. In ***Mamidi Anil Kumar Reddy vs State of Andhra Pradesh & Anr.***, reported in (2024) SCC OnLine SC 127, decided on February 5, 2024, the Supreme Court held:-

“15. The phenomenon of false implication by way of general omnibus allegations in the course of matrimonial disputes is not unknown to this Court. In Kahkashan Kausar alias Sonam v. State of Bihar, this Court dealt with a similar case wherein the allegations made by the complainant-wife against her in-laws u/s. 498A and others were vague and general, lacking any specific role and particulars. The court proceeded to quash the FIR against the accused persons and noted that such a situation, if left unchecked, would result in the abuse of the process of law.

16. More recently, this Court in Mahmood Ali v. State of U.P., while considering the principles applicable to the exercise of jurisdiction u/s. 482 CrPC, observed as follows:

“12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or 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 for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such

that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just 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. 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 try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

17. *Considering the dicta in Mahmood Ali (supra), we find that the High Court in this case has failed to exercise due care and has mechanically permitted the criminal proceedings to continue despite specifically finding that the allegations are general and omnibus in nature. The Appellants herein approached the High Court on inter alia grounds that the proceedings were re-initiated on vexatious grounds and even highlighted the commencement of divorce proceedings by Respondent No. 2. In these peculiar circumstances, the High Court had a duty to consider the allegations with great care and circumspection so as to protect against the danger of unjust prosecution.”*

21. Considering the materials on record and the case diary it appears that in the present case there is serious dispute between the parties since the initiation of their relationship. The opposite party no.2 has never stayed in her matrimonial home. Admittedly the social marriage between the parties did not take place. It is also the case of the complainant/opposite party no. 2 that in Nepal she slept with the, to

be mother in law/petitioner no. 3 (allegedly compelled to sleep on the ground).

22. It thus appears that the scope for torture/cruelty upon her by the petitioners is prima facie not substantiated. **There appears to be a serious issue regarding the parties compatibility, right from the beginning.**

23. 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 purpose 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 lawful 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.”

24. 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.”

- 25.** The allegations in the written complaint in this case are general in nature and do not make out even a prima facie case against the petitioners in respect of the offences alleged. The FIR in this case was filed on 19.06.2020, though, the parties were living separately since 14th March, 2020, after their registered marriage. On 20.03.2020 the petitioner informed the father of the opposite party no. 2 of his reluctance to go in for the social marriage.
- 26.** 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.

27. CRR 1372 of 2020 is allowed.

28. The proceedings being CGR No. 2130/20 pending before the Court of the Learned Chief Judicial Magistrate at Alipore in connection with Tollygunge Women Police Station Case No. 3 dated 20.06.2020 under Sections 498A/406/34 of the Indian Penal Code and Section 4 of Dowry Prohibition Act, **is hereby quashed in respect of the petitioners.**

29. All connected applications, if any, stand disposed of.

30. Interim order, if any, stands vacated.

31. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

32. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)