

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1763 of 2020

With

CRAN 1 of 2021

Sri Swapan Bera

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Sudipta Kumar Bose,
Mr. Aniruddha Bandhyopadhyay.

For the Opposite Party No. 2 : Mr. Krishna Das Poddar,
Mr. Pradip Paul,
Ms. Renesa Dey.

For the State : Mr. Bitasok Banerjee.

Hearing concluded on : 22.02.2024

Judgment on : 21.03.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings of G.R. Case No. 1008 of 2020, corresponding to Patashpur Police Station Case No. 377 of 2020, dated 09.10.2020, under Sections 498A/323 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, pending before the Court of the Learned Additional Chief Judicial Magistrate at Contai, Purba Medinipur.
2. The petitioner states that he being the husband of the de facto complainant is now facing the false charges of committing torture upon the de facto complainant/opposite party No. 2 for demand of dowry under Sections 498A/323 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act, **in spite of the marriage tie between the petitioner and the opposite party No.2 having been dissolved by a decree of divorce by the competent Court more than two years before the institution of the impugned proceedings against the petitioner.**
3. The parties were married on 30.06.2005.
4. The Petitioner states that he is a Medical Practitioner by profession and the de facto complainant/opposite party No. 2 was a housewife, and therefore the petitioner till date pays all expenses for maintenance of the de facto complainant/opposite party No. 2 even after the period the de

facto complainant/opposite party No. 2 deserted the petitioner on 27.02.2016.

5. The petitioner submits that during the subsistence of their marriage, the de facto complainant/the opposite party no.2 herein inflicted mental and physical cruelty and also allegedly resorted to blackmail.
6. The petitioner then filed a matrimonial suit against the de facto complainant/opposite party No. 2 , being Mat Suit No. 149 of 2018 [Sri Swapan Bera – vs – Smt. Moumita Bera] seeking a decree of divorce under Section 27(1) of the Special Marriage Act, 1954. Notice of the said suit was served upon the de facto complainant/opposite party no. 2 but she did not appear in the said suit and the said matrimonial Suit was finally decreed ex parte against the de facto complainant/opposite party No.2 and a decree of divorce was passed by the Learned Additional District Judge, Fast Track Court IV, Barrackpore, North 24 Parganas **on 27.06.2018** thereby **dissolving the marriage** tie between the petitioner and the de facto complainant/opposite part No. 2.
7. In spite of obtaining a decree of divorce against the de facto complainant/opposite party No.2, and the marriage between the parties having dissolved, and the contract of marriage between the petitioner and the de facto complainant/opposite party No.2 having ceased after 27th June, 2018, the petitioner out of his good nature and own free will, without any direction of any Court of Law, continued paying monthly maintenance expenses at the rate of Rs. 10,000/- [Rupees Ten

Thousand] per month to the de facto complainant and transferred the said amount to the bank account of the de facto complainant/opposite party no. 2. The petitioner also invested in a Life Insurance Policy in favour of the de facto complainant/opposite party No.2 at the Life Insurance Corporation (LIC) of India for a matured amount of Rs.20,00,000/- [Rupees Twenty Lakhs] whose yearly premium the petitioner is still paying even after obtaining the decree of divorce on 27th June, 2018.

8. The petitioner after a period of more than almost 17 months from the date of decree of divorce, with no appeal being filed by the opposite party No.2 within the statutory period of limitation having complete knowledge of the decree of divorce, the petitioner got married with one Swati Sarkar on 28.11.2019 under the Special Marriage Act, 1954 and the said marriage is an arranged marriage through 'ABP Weddings', a matrimonial web portal, based in Kolkata, and the Social and Customary rituals were performed on 11th March, 2020, and the petitioner and his lawfully wedded present wife are residing together happily with one another and leading a perfect conjugal life since 28th November, 2019.
9. The petitioner suddenly came to learn on 12th October, 2020 from an Officer of Patashpur Police Station, that a FIR has been registered against him and a police case, being Patashpur Police Station Case No. 377 of 2020 dated 09.10.2020, under Sections 498A/323 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act has been

started against the petitioner at the instance of the de facto complainant/opposite party No.2 upon an application under Section 156(3) of the Code of Criminal Procedure being taken out by the de facto complainant/opposite party No.2 before the Learned Additional Chief Judicial Magistrate at Contai on 24th September, 2020.

- 10.** The allegation against the petitioner under Section 156(3) Cr.P.C. are as follows:-

On 30.06.2005 Complainant was married with accused Swapan Bera by registry & later on 21.02.2006 socially as per Hindu customs with demandable cash, gold ornaments, others dowry articles. Thereafter she went to her in-laws house & lived with him as spouse. But she did not give birth of any child. Accused person is a MBBS, MS (ENT) doctor in occupation & now posted at Purulia, Raghunathpur SD Hospital. While her husband was posted at Mechogram as BMOH he took her at his quarter where she was subjected to torture mentally. He pressurized her to take cash Rs. 5,00,000/- from her father to open a nursing home. Complainant refused to do the same then she was tortured both mentally & physically. After that Complainant was shifted at her in-laws house where accused person used to torture her.

On 08.03.20 at about 11.00 hrs her husband came to the house from his posting place & asked her for divorce as he will marry another lady 2nd time. While Complainant refused his proposal then accused person abused & assaulted her physically & driven out her from in-laws house. Lastly on 12.09.20 at about 10.30 hrs Complainant came to know that her husband married another lady. Now she is residing at her father's house.

- 11. The Learned Judge while granting the ex parte decree for divorce in the order dated 27.06.2018 observed as follows:-**

*“After filing of this suit, notice of this suit has been sent to the Respondent/wife, **though the notice of this suit duly served upon the Respondent/wife but for the reasons best known to her, she did not appear in***

this Suit and as such, the date of hearing of this Suit has been fixed for ex-parte hearing”.

12. Thus in spite of notice being duly served the opposite party/de facto complainant did not contest the divorce suit and the divorce decree was thus granted on 27.06.2018.
13. This prima facie shows that the opposite party, de facto complainant was aware of the divorce suit and chose not to contest it.
14. **The state has placed the Case Diary, wherein the allegation in the written complaint is to the extent:-**

“On 08.03.20 at about 11.00 hrs her husband came to the house from his posting place & asked her for divorce as he will marry another lady 2nd time. While Compl. refused his proposal their accused person abused & assaulted her physically & driven out her from in-laws house. Lastly on 12.09.20 at about 10.30 hrs. Complainant. came to know that her husband married another lady. Now she is residing at her father’s house”.

15. The order of the year 2018 in the divorce suit clearly shows that notice of the Suit had been duly served upon the opposite party/de facto complainant.
16. **The marriage took place in the year 2006, the divorce in 2018 and the present case has been filed in the year 2020.**
17. **Section 498A of I.P.C., 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.”

18. The complaint in the present case was lodged on 09.10.2020 **after about two years of the decree of divorce** being granted to the parties on 27.06.2018.

19. The materials/allegations in the Case Diary are **General in nature.**

20. In *U. Suvetha vs State by Inspector of Police & Anr., Criminal Appeal No. 938 of 2009 (arising out of Special Leave Petition (Crl.)*

No. 7163 of 2008), on 6 May, 2009, the Supreme Court held:-

"2. Whether the term 'relative of husband of a woman' within the meaning of Section 498A of the Indian Penal Code should be given an extended meaning is the question involved herein.

7. The aforementioned provision was inserted in the Indian Penal Code by reason of The Criminal Law (Second Amendment) Act, 1983 (Act No.45 of 1983). The statement of objects and reasons thereof reads as under :-

"The increasing number of Dowry Deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the working of Dowry Prohibition Act, 1961. Cases of cruelty by the husband and the relatives of the husband which culminate in suicide by, or murder of, the hapless woman concerned, constitute only a small fraction of the cases involving such cruelty. It is therefore proposed to amend the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act suitably to deal effectively not only with cases of Dowry Death but also cases of cruelty to married woman by their in laws."

9. Ingredients of 498A of the Indian Penal Code are:-

- a) The woman must be married;*
- b) She must be subjected to cruelty or harassment; and*
- c) Such cruelty or harassment must have been shown*

either by husband of the woman or by the relative of her husband."

12. In the absence of any statutory definition, the term 'relative' must be assigned a meaning as is commonly understood. Ordinarily it would include father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or grand-daughter of an individual or the spouse of any person. The meaning of the word 'relative'

would depend upon the nature of the statute. It principally includes a person related by blood, marriage or adoption.

The word 'relative' has been defined in P. Ramanatha Aiyar Advanced Law Lexicon - Volume 4, 3rd Edition as under:-

"Relative, "RELATIVE" includes any person related by blood, marriage or adoption. [Lunacy Act].

The expression "REALTIVE" means a husband wife, ancestor, lineal descendant, brother or sister. [Estate Duty Act].

"RELATIVE" means in relation to the deceased,

- a) the wife or husband of the deceased;
- b) the father, mother, children, uncles and aunts of the deceased, and
- c) any issue of any person falling, within either of the preceding sub-clauses and the other party to a marriage with any such person or issue [Estate Duty Act].

A person shall be deemed to be a relative of another if, and only if, -

- a) they are the members of a Hindu undivided family, or
- b) they are husband and wife; or
- c) the one is related to the other in the manner indicated in Schedule I-A [Companies Act, 1956].

"RELATIVE" in relation to an individual means –

- a) The mother, father, husband or wife of the individual, or
- b) a son, daughter, brother, sister, nephew or niece of the individual, or
- c) a grandson or grand-daughter of the individual, or
- d) the spouse of any person referred to in sub-clause (b) [Income tax Act].

"RELATIVE" MEANS-

- 1) spouse of the person;
- 2) brother or sister of the person;
- 3) brother or sister of the spouse of the person;

- 4) any lineal ascendant or descendant of the person;
- 5) any lineal ascendant or descendant of the spouse of the person;

[Narcotic Drugs and Psychotropic Substances Act]."

Random House Webster's Concise College Dictionary defines 'relative' at page 691 to mean :-

"Relative n. 1. a person who is connected with another or others by blood or marriage. 2. something having, or standing in, some relation to something else. 3. something dependent upon external conditions for its specific nature, size, etc. (opposed to absolute). 4. a relative pronoun, adjective, or adverb. - adj. 5. considered in relation to something else; comparative: the relative merits of gas and electric heating. 6. existing or having its specific nature only by relation to something else; not absolute or independent: Happiness is relative.

7. having relation or connection. 8. having reference : relevant; pertinent (usually fol. by to):

two facts relative to the case. 9. correspondent; proportionate: 10. depending for significance upon something else: "Better" is a relative term. 11. of or designating a word that introduces a subordinate clause and refers to an expressed or implied element of the principal clause: the relative pronoun who in "That was the woman who called." 12. (of a musical key) having the same key signature as another key: a relative minor."

13. Furthermore, the provision is a penal one. It, thus, deserves strict construction. Ordinarily, save and except where a contextual meaning is required to be given to a statute, a penal provision is required to be construed strictly.

This Court in *T. Ashok Pai v. Commissioner of Income Tax, Bangalore*, [2007 (8) SCALE 354] held as under:-

"19. It is now a well-settled principle of law that the more is the stringent law, more strict construction thereof would be necessary. Even when the burden is required to be discharged by an assessee, it would not be as heavy as the

prosecution. [See *P.N. Krishna Lal and Ors. v. Govt. of Kerala and Anr.* 1995 Supp (2) SCC 187]."

[See also *Noor Aga v. State of Punjab*, [2008 (9) SCALE 681].

14. A Three Judge Bench of this Court, however, in *Shivcharan Lal Verma and another v. State of M.P.*, [2002 (2) Crimes 177 SC = JT (2002) 2 SC 641] while interpreting Sedction 498A of the Indian Penal Code, in a case where the prosecution alleged that during the life of the first wife-Kalindi, appellant therein married for the second time, Mohini, but after marriage both Kalindi and Shiv Charan tortured Mohini as a result thereof, she ultimately committed suicide by burning herself, opined :-

"..One, whether the prosecution under Section 498A can at all be attracted since the marriage with Mohini itself was null and void, the same having been performed during the lifetime of Kalindi. Second, whether the conviction under Section 306 could at all be sustained in the absence of any positive material to hold that Mohini committed suicide because of any positive act on the part of either Shiv Charan or Kalindi. There may be considerable force in the argument of Mr. Khanduja, learned counsel for the appellant so far as conviction under Section 498A is concerned, inasmuch as the alleged marriage with Mohini during the subsistence of valid marriage with Kalindi is null and void. We, therefore, set aside the conviction and sentence under Section 498A of the IPC."

15. A Two Judge Bench of this Court, however, in *Reema Aggarwal v. Anupam*, [(2004) 3 SCC 199], while construing the expression 'husband' opined that the word should not be given a restricted meaning to include those, who had married for the second time strictly in accordance with law, stating :-

"...If such restricted meaning is given, it would not further the legislative intent. On the contrary, it would be against the concern shown by the legislature for avoiding harassment to a woman over demand of money in relation to marriages. The first exception to Section 494 has also some relevance. According to it, the offence of bigamy will not apply to "any person whose marriage with such husband or wife has been declared void by a court of

competent jurisdiction". It would be appropriate to construe the expression "husband"

to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions -- Sections 304-B/498-A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498-A and 304-B IPC. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as "husband" is no ground to exclude them from the purview of Section 304-B or 498-A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

16. *It is not necessary to go into the controversy as to whether Reena Agarwal (supra) was correctly decided or not as we are not faced with such a situation here. We would assume that the term 'husband' would bring within its fold a person who is said to have contracted a marriage with another woman and subjected her to cruelty."*

21. At the time of filing the present case, the petitioner was not her husband. **The case was filed almost two years after divorce, which clearly appears to be an afterthought.** The allegations also do not contain the ingredients required to constitute the offences alleged in the present case against the petitioner.

22. 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.”

23. The present case comes under **clause 1, 3 and 7 of Para 102 of Bhajan Lal (Supra).**

24. CRR 1763 of 2020 is thus allowed.

25. The proceedings being G.R. Case No. 1008 of 2020, corresponding to Patashpur Police Station Case No. 377 of 2020, dated 09.10.2020, under Sections 498A/323 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, pending before the Court of the Learned Additional Chief Judicial Magistrate at Contai, Purba Medinipur, **is hereby quashed in respect of the petitioner.**

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

27. There will be no order as to costs.

28. Interim order, if any, stands vacated.

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

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

(Shampa Dutt (Paul), J.)