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Ct. No. 3

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction**

**C.R.R. 91 of 2023
Azmat Ali @ Asmat Ali & Anr.
Vs.
The State of West Bengal & Anr.**

*Mr. Sabir Ahmed
Mr. Hillol Saha Poddar*

...For the Petitioners

*Mr. Aditi Shankar Chakraborty
Mr. Abhijit Sarkar*

...For the State

Being aggrieved by and dis-satisfied with the criminal proceeding, being G.R. Case No. 1287 of 2022, arising out of Tufanganj Police Station Case No. 907 of 2022 dated 3rd November, 2022 under Section 498A of the Indian Penal Code read with Section 3/4 of the Dowry Prohibition Act, pending before the Additional Chief Judicial Magistrate, Tufanganj, present application has been preferred with a prayer for quashing the said proceeding in respect of present petitioners.

It is submitted on behalf of the petitioners that the petitioner No. 1 herein, being the maternal grand father-in-law of the de facto complainant and petitioner No. 2 is the son of the petitioner No. 1 reside separately at a different place at Tufanganj and are no way connected with the alleged offence.

The allegations levelled in the FIR is that the opposite party No. 2 was married with one Hasinur Rahaman and after marriage she had gone to her matrimonial house to live their conjugal life. It is further alleged that her husband, father-in-law and other family members including petitioners after marriage started physical and

mental torture demanding Rs. 5 lakhs and other gold ornaments and as de facto complainant failed to meet such unlawful demand, the accused persons physically assaulted her. The accused persons did not look after her (de facto complainant) even when she was carrying and on 10th April, 2022, the accused persons assaulted her and had driven her out from her matrimonial home.

Mr. Sabir Ahmed, learned Counsel appearing on behalf of the petitioners submits that the present petitioners are distant relatives and never maintained any domestic relationship with the complainant and in no way connected with the alleged offence. He further submits that de facto complainant was allegedly driven out from her matrimonial home on 10.4.2022 but complaint was lodged on 03.11.2022 and such inordinate delay in lodging FIR has not been explained. He further submits that the ingredients of the offence under Section 498A or under the provision of Dowry Prohibition Act have not fulfilled in respect of the present petitioners. He also submits that no specific allegation has been attributed against the present petitioners alleging cruelty or demand of dowry. No specific allegation has also been alleged that due to harassment made by the petitioners herein, she had left her matrimonial house. In fact the Investigating Authority after completion of perfunctory investigation in a cryptic manner has filed the charge sheet, which is merely a table work and continuation of said proceeding against present petitioners will be an abuse of process of law.

Accordingly they have prayed for quashing the proceeding, being G.R. Case No. 1287 of 2022 against them.

In support of his contentions, Mr. Ahmed relied upon the decisions in the case of *Rajesh Sharma & Ors. Vs. State of Uttar Pradesh & Anr.*, reported in (2018) 10 SCC 472 (Para 14); *K Subba Rao & Ors. Vs. State of Telangana, represented by its Secretary, Department of Home, & Ors.*, reported in (2018) 14 SCC 452 (Para 6); *Geeta Mehrotra & Anr. Vs. State of Uttar Pradesh & Anr.*, reported in (2012) 10 SCC 741 (Para 20); *Preeti Gupta & Anr. Vs. State of Jharkhand & Anr.*, reported in (2010) 7 SCC 667 (Paras 28, 32 & 33); *Kahkashan Kausar Alias Sonam & Ors. Vs. State of Bihar & Ors.*, reported in (2022) 6 SCC 599; *Riju Ray & Ors. Vs. State of West Bengal & Anr.*, reported in 2023 SCC OnLine Cal 2428 and *Samita Ray & Anr. Vs. State of West Bengal & Anr.*, reported in 2023 SCC OnLine Cal 1011.

Learned Counsel appearing on behalf of the State submits that from the contents of the FIR as well as from the materials in case diary, it appears that the Prosecution Agency have collected sufficient materials to go for trial against the present petitioners. He further submits that on perusal of the decisions cited on behalf of the petitioners it would clearly reveal that in those cases, no specific allegation has been attributed against the concerned petitioners and as such the Court was pleased to invoke its inherent power under Section 482 of the Criminal Procedure Code, but that is not the case for the present context. In the present case specific allegations have been attributed against the petitioners herein which clearly constitute offence under

Section 498A of the Indian Penal Code as well as Section 3 and 4 of the Dowry Prohibition Act, and as such, whether the accused persons have committed any offence as alleged or not, can only be decided after trial and accordingly the Prosecution/State has prayed for dismissal of the present application.

I have considered the submissions made on behalf of the parties. On perusal of the FIR it appears that the specific allegation has been attributed in the FIR stating that at the instigation of the present petitioners, husband illegally demanded Rs. 5 lakhs and gold ornaments and created pressure on her and as she failed to bring the same from her parents, the accused persons including present petitioner assaulted her physically and also put her under the threat of starvation. On perusal of the statement recorded under Section 161 of the Criminal Procedure Code it also appears that specific allegations has been attributed against the present petitioners constituting offence under Section 498A as well under the Dowry Prohibition Act.

From the judgments relied by the petitioners it clearly demonstrate that Apex Court on numerous occasion expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes. But in the present case, I find that defacto complainant and the witnesses have stated what role exactly played by the present petitioners in committing the offences. The allegation and materials in CD Prima facie constitute

offences under IPC as well as under Dowry prohibition Act. Now whether such imputations against petitioners herein are true or not would have to be decided in the Trial. Charge sheet has already been submitted against the petitioners. Generally when a High Court deals with an Application under section 482Cr.P.C., court is not supposed to examine the correctness of the allegations except in rare case where it is patently clear that the allegations are absurd and inherently improbable for constituting the offence.

Having given thoughtful consideration to the averments made in the FIR and material in CD, it appears that it contains allegations of mental and physical ‘cruelty’ to the complainant allegedly inflicted by the petitioners herein. The appreciation of averments available so far is not permissible at the stage of considering prayer for quashing and the facts stated will have to be accepted as they appear on the very face of it.

Learned counsel for petitioner is vociferous about delayed FIR in support of quashing the proceeding against present petitioner. While dealing with the term “cruelty”, Hon’ble Apex Court in ***Rupali Devi Vs. State of Uttar Pradesh and others***, reported in (2019) 5 SCC 384 held in paragraph 14 as follows:-

“Cruelty” which is the crux of the offence under [Section 498A](#) IPC is defined in Black’s Law Dictionary to mean “The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (Abuse, inhuman treatment, indignity)”. Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being illtreated are aspects that cannot be ignored while understanding the meaning of the expression “cruelty”

appearing in [Section 498A](#) of the Indian Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatize the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress caused by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.

In this context it is also to be mentioned that case laws cited by the petitioners are to be considered in the perspective of facts and circumstances of each case. The ratio laid down in Preeti Gupta Case (supra), Geeta Mehrotra (supra) etc are based on the facts that complaint and statements of the witnesses recorded, transpired no specific allegations against the respective petitioners and no role has been attributed against them, which is not the case in the present context and accordingly distinguishable.

Since in the present context, FIR as well as the materials so far collected during investigation as appearing in the Case Diary, it cannot be said that no offence has at all been made out against the present petitioners, I find that this is not a fit case where an order for quashing the impugned proceeding can be passed in respect of the present petitioners. In such view of the matter, C.R.R. 91 of 2023 is hereby dismissed.

However, this dismissal order will not preclude the petitioners herein to take all these points, agitated herein, at the time of charge hearing by the Trial Court and in the event of taking such grounds

during change hearing, court below will adjudicate the same without being influenced by any observation made herein.

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

(Ajoy Kumar Mukherjee, J.)