

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 76 of 2023

Smt. Amita Paul Alias Amita Mahapatra & Another
Versus
The State of West Bengal & Another

For the Petitioners : Mr. Indranuj Dutta. Adv.
Mr. Atanu Basu, Adv.
Ms. Benazir Sk., Adv.

For the State : Mr. Imran Ali, Adv.
Ms. Debjani Sahu, Adv.

Heard on : 16.12.2024

Judgment on : 12.02.2025

Ajay Kumar Gupta, J:

1. Petitioners being the married sisters of accused no. 1, namely, Amit Paul and married sisters-in-law of opposite party no. 2 have preferred this Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') seeking quashing of the impugned proceedings being G.R. Case No. 1207 of 2021 arising out of Lake Town Police Station Case No. 256 of 2021 dated 27.09.2021 under Sections 498A/406/34 of the Indian Penal Code, 1860 and all orders passed therein in connection with the said proceeding pending before the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas.

2. The brief facts of the case of the petitioners are that petitioner no. 1 is currently serving as a Professor/Lecturer in the Bombay Hospital College of Nursing, Indore, Madhya Pradesh, where she joined in the said post on and from 16.11.2010. Prior to this, she was employed as a Staff Nurse at Cancer Hospital and Research Institute, Gwalior, Madhya Pradesh on and from 05.08.2002 till 27.10.2005 and, thereafter, she worked as a Lecturer in Pragyan College of Nursing, Bhopal, Madhya Pradesh from 23.07.2008 to 09.01.2010. The petitioner no. 1 married with Bhagwat Mahapatra on 03.11.2009 and the marriage of the petitioner no. 2 was to Imran

Ahmed Raza on 16.02.2007. Both petitioners were consistently and continuously resided separately at completely separate residences and are in no way connected with the daily affairs of the matrimonial home of the opposite party no. 2.

3. The petitioner nos. 1 and 2 are permanent residents of addresses mentioned in the cause title i.e. Madhya Pradesh and Chhattisgarh which are far away located from their parental house.

4. The marriage of opposite party no. 2 was solemnized on 05.05.2009 with the brother of the petitioners, Amit Paul, in accordance with Hindu Rites and Customs. She began residing with her husband at the matrimonial home situated at Main Road, Godripara, Chirmiri, near Gurudwara, Khursiya, Koriya, Chhattisgarh, Pin – 497553 (the permanent residence of the brother of the petitioners, namely, Amit Paul) which is situated about 183 kms away from the house of the petitioner no. 2.

5. The opposite party no. 2 lodged a completely false and frivolous written complaint on 27.09.2021 with the Officer-in-Charge, Lake Town Police Station against the married sisters-in-law and two others resulting in the registration of an FIR being Lake Town Police Station Case No. 256 of 2021 dated 27.09.2021 under Sections 498A/406/34 of the IPC (corresponding to G.R. Case No. 1207 of

2021). Both the petitioners herein are entirely innocent and they have been implicated solely to harass them.

6. Due to matrimonial discord, the opposite party no. 2 was taken to her parental house by the family members of the opposite party no. 2 on 16.09.2021 and now she is residing at her parental home with her daughter.

7. In the complaint, the opposite party no. 2 alleged, inter alia, that after marriage, Opposite Party No. 2 began her conjugal life with Amit Paul and started living at Main Road, Godripara, Chirmiri, near Gurudwara, Khursiya, Koriya, Chhattisgarh, Pin-497553 as husband and wife. From the said wedlock, a female child was born on 01.03.2010, who is presently about 15 years old. After marriage, the husband of the Opposite Party No. 2 demanded to bring more money from her father, as her father did not give sufficient articles and valuable things to him at the time of marriage. After marriage, the husband of the Opposite Party No. 2 also pressurized the Opposite Party No. 2 to bring Rs. 5,00,000 (Rupees Five Lakhs only), a TV Set, a Fridge, an A.C. and other gold ornaments from her father. The Opposite Party No. 2 was constantly tortured by her husband. Whenever the Opposite Party No. 2 raised objection, her mother-in-law and other-in-laws supported her husband. The husband and other-in-laws of the Opposite Party No. 2 subjected her to torture,

both mentally and physically. Initially, the relationship between the Opposite Party No. 2 and her husband was good. But, later the husband of the Opposite Party No. 2 created a distance with her physically, since he was having an affair with one lady, namely, Priyanka Rai. When the Opposite Party No. 2 raised objection regarding the said relationship with that lady, her husband assaulted her and her minor daughter.

8. The husband of the Opposite Party No. 2 sometimes did not provide proper food to her and her minor daughter. The husband and mother-in-law of the Opposite Party No. 2 assaulted her and her daughter. The husband of the Opposite Party No. 2 told her that at present he does not have any relation with her and he intends to marry the said Priyanka Rai. The Opposite Party No. 2 was compelled to inform all the happenings to her parents and told them to immediately come to Chhattisgarh and rescue her from the said house, otherwise she and her minor daughter may die at any stage. The father, sister (Debjani Chakraborty) and husband of the sister of the Opposite Party No. 2 came to her matrimonial home at Chhattisgarh on 16.09.2021 and rescued the Opposite Party No. 2 and her minor daughter from the matrimonial home. The Opposite Party No. 2 is presently residing at her paternal home with her daughter.

9. Though, no roles ever played or interfered either by the petitioner no. 1 or by the petitioner no. 2 in their matrimonial dispute. However, they have been implicated falsely. Hence, this Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONERS:

10. Learned counsel appearing on behalf of the petitioners submitted that the case was registered on 27.09.2021 after a delay of almost 12 years 4 months 23 days from the date of alleged incident of offence without any explanation and the same smacks mala fide intention and it is made clear that the impugned proceedings had been initiated against the present petitioners with an ulterior motive and also a product of afterthought only to harass the married sisters-in-law. Furthermore, allegations whatsoever made against the present petitioners are concocted, general and omnibus. No specific role has been attributed against both the petitioners. Accordingly, by no stretch of imagination, gives rise to any criminal offence committed by the present petitioners under Sections 498A/406/34 of the IPC. Both are responsible and diligent citizens of India and surrendered before the Learned Additional Chief Judicial Magistrate, Bidhannagar and upon such surrender, the Learned Magistrate enlarged them on bail on 18.11.2021. But, subsequently, it appears after completion of perfunctory investigation, the investigating officer

illegally and arbitrarily submitted charge sheet being No. 178/2022 dated 31.08.2022 under Sections 498A/34 of the IPC against the petitioners and two others. For that reason, the present petitioners have preferred this Criminal Revisional application praying for quashing of the proceeding otherwise they would suffer irreparable loss and injuries.

11. Learned counsel placed reliance of two judgments passed in the cases of ***Kahkashan Kausar Alias Sonam and Others Vs. State of Bihar and Others***¹ and ***Preeti Gupta and Another Vs. State of Jharkhand and Another***² to support of his contention that when there are general and omnibus allegations, such allegations to be scrutinized with great care and circumspection specifically against the husband's relatives, who are living in different cities and never or rarely visited the matrimonial home of the complainant, while exercising its power under Section 482 of the CrPC for quashing of the same.

12. In spite of good service, none appeared on behalf of the opposite party no. 2. No accommodation has been sought for.

¹ (2022) 6 SCC 599;

² (2010) 7 SCC 667.

SUBMISSION ON BEHALF OF THE STATE:

13. Learned counsel appearing on behalf of the State produced the case diary and further submitted that after investigation, a prima facie case has been established against the accused persons. Accordingly, this application is liable to be dismissed.

DISCUSSION AND FINDINGS BY THIS COURT:

14. Having heard the arguments and submissions made by the parties as well as coming to the facts of the present case and upon perusal of the written complaint, lodge by the de-facto complainant/opposite party no. 2 carefully, it reveals that the opposite party no. 2 made an allegation that since after marriage, her husband demanded her to bring money from her father as because her father has not given sufficient articles or dowry at the time of marriage and whenever she raised objection, her mother-in-law and other in-laws supported her husband who, in turn, tortured her both mentally and physically. She further stated her husband and other in-laws inflicted tortures that increased day by day. However, no specific role attributed against the married sisters-in-law, who are the petitioners herein. The allegations are, therefore, general and omnibus in the written complaint. After investigation, a charge sheet

was submitted against the accused persons being No. 178/2022 dated 31.08.2022 under Sections 498A/34 of the IPC.

15. However, upon perusal of the case diary particularly the statement of the victim and other witnesses recorded under Section 161 of the CrPC, this Court does not find any specific and/or distinct allegations made against either of the present petitioners. It is pertinent to note that opposite party no. 2's marriage was solemnized on 05.05.2009 according to Hindu Rites and Customs. From the said wedlock, a female child was born on 01.03.2010, who is presently about 15 years old.

16. It is also an admitted fact that she is residing separately at her parental house with her daughter on and from 16.09.2021. She has lodged complaint on 27.09.2021 after almost 12 years of her marriage against the petitioners herein. Both the petitioners were married long ago on 16.02.2007 and on 03.11.2009 respectively and they are residing in their matrimonial homes i.e. situated far away from the matrimonial home of the opposite party no. 2. The petitioner no. 1 is presently serving as a Professor/Lecturer in the Bombay Hospital College of Nursing, Indore, Madhya Pradesh.

17. Upon perusal of the statement recorded under Section 161 of the CrPC of the complainant, it reveals she alleged that the sisters-in-

law had threatened opposite party no. 2 over phone. But, no specific date, time or mobile number was mentioned in the written complaint or in her statement. This creates a situation where it is impossible to ascertain the role played by each accused in furtherance of the offence. Therefore, the allegations are found general and omnibus and can, at best, be said to have been made only to implicate the petitioners.

18. The tendency to implicate the husband and all his immediate relatives is also not uncommon. Even after conclusion of criminal trial, it is often difficult to ascertain the real truth. The Courts have to be extremely careful and cautious while dealing with these complaints and should take pragmatic realities into considerations while handling criminal case base on matrimonial dispute.

19. After careful scrutiny of the materials available in the case diary, this Court does not find any sufficient or cogent evidence against the present petitioners, who are the married sisters-in-law of the de-facto complainant/opposite party no. 2. Even if, for the sake of argument, these proceedings were to be continued, the conviction of petitioners appears bleak and remote. To secure the ends of justice, the proceedings are deserved to be quashed under the inherent power

granted under Section 482 of the CrPC insofar as the petitioners are concerned.

20. 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.***³ which has laid down the basic points for consideration pursuant to which a complaint may be entertained in accordance with law before a Court of law. The Hon'ble Court has narrated down as to when the extraordinary power of this Court under Section 482 of the Code of Criminal Procedure, 1973 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

³ AIR 1992 SUPREME COURT 604 : 1992 Supp. (1) Supreme Court Cases 335

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.”

21. In the light of above discussions made by this Court and in view of observations 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, and 5 above.

22. Accordingly, **CRR 76 of 2023** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.

23. Consequently, the impugned proceeding, being G.R. Case No. 1207 of 2021 arising out of Lake Town Police Station Case No. 256 of 2021 dated 27.09.2021 under Sections 498A/406/34 of the Indian Penal Code, 1860 in which charge sheet being No. 178/2022 dated 31.08.2022 under Sections 498A/34 of the IPC was submitted against the petitioners, pending before the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas is quashed and all orders passed therein in connection with the said proceeding are hereby set aside insofar as the present petitioners are concerned.

24. Let a copy of this Judgment be sent to the Learned Court below for information.

25. Interim order, if any, stands vacated.

26. Case Diary, if any, be returned to the learned counsel for the State.

27. Parties shall act on the server copies of this Judgment uploaded on the website of this Court.

28. 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.)