

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 627 of 2022

VISHNU SARAF & ANR.

VS.

THE STATE OF WEST BeENGAL & ANR.

For the Petitioners : Mr. Ayan Bhattacharjee, Sr. Adv.
Mr. Abhijit Chowdhury.

For the State : Mr. Debasish Roy, Public Prosecutor
Ms. Faria Hossain,
Mr. Anand Keshari.

For the Opposite Party No.2 : Mr. Suresh Kr. Sahani,
Mr. Lokesh Sharma,
Mr. Deokinandan Sharma.

Hearing concluded on : 17.12.2024

Judgment on : 10.01.2025

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of the criminal proceeding being ACGR case no.4836 of 2021 arising out of Haridevpur PS case no.299 of 2021 dated 01.12.2021 under Sections 498A, 406, 323, 324, 506, 377 and 307 read with Section 34 of the Indian Penal Code, 1860 read

with Section 4 of the Dowry Prohibition Act pending before the learned Additional Chief Judicial Magistrate at Alipore.

2. The petitioners' case is as follows:-

- a. The petitioner no.1 is the husband of the de facto complainant being the opposite party no.1 whereas the petitioner no. 2 is the father-in-law and petitioner no.3 is the mother-in-law of the de facto complainant/opposite party no.2 herein.
- b. The parties got married on 13th February, **2013** according to Hindu rites and customs and the same was an arranged marriage.
- c. A written complaint dated 30.11.**2021** was made by the opposite party no.2 and the same was treated as FIR no.299 of 2021 dated 01.12.2021 registered with the Haridevpur Police Station.
- d. During the course of investigation the well wishers and relatives of the petitioner no.1 and the opposite party no.2, intervened and a settlement was arrived at by and between the parties and a **Memorandum of Understanding** was executed being given effect to by making the payment of the first installment by the

petitioner no.1. After which the opposite party no.2 was no more willing to proceed with the instant case.

- e. Pursuant to the Memorandum of Understanding being executed by and between the parties herein, the opposite party no.2 filed a suit for mutual divorce under Special Marriage Act before the District and Sessions Judge at Alipore being MAT Suit No.542 of 2022.

3. But, during the hearing of the revisional application, **the opposite party no.2 has now withdrawn her consent to the amicable settlement** which had been effected between the parties and, as such, an **order dated 09.08.2023** was passed in this case observing that due to certain disputes, the joint petition of compromise could not be effected to and that the matter would **be heard on contest**.
4. Supplementary and an additional supplementary affidavit have been filed annexing several documents.
5. **The written complaint in the present case was filed after eight years of marriage** claiming mental and physical cruelty in her matrimonial home, by her husband and in laws, allegedly demanding dowry.

6. The following judgments have been relied upon on behalf of the petitioners:-

- a. Ruchi Agarwal vs. Amit Kumar Agrawal & Ors., (2005) 3 SCC 299.*
- b. Mohd. Shamim & Ors. Vs. Nahid Begum (Smt) & Anr., (2005) 3 SCC 302.*
- c. Trisha Singh vs. Anurag Kumar, AIR 2024 SC 2939.*
- d. Dhiraj Vijaykumar Makhija vs. State of Maharashtra, through the Senior Inspector of Police & Anr., 2024 SCC OnLine Bom 1843.*
- e. Geeta Kapur vs. State of Maharashtra, AIR Online 2024 Bom 350.*
- f. Ram Lal & Ors. Vs. The State of Haryana & Anr., 2008 SCC OnLine P&H 103.*
- g. Mahendra Solanki vs. State of Rajasthan, AIR Online 2021 Raj 125.*
- h. Hardeep Singh vs. State of Punjab and others, CRM-M-56859-2023, High Court of Punjab and Haryana at Chandigarh.*

- i. Mohammed Moiz Hussain & Anr. vs. State of Telangana & Anr., Criminal Petition No.1510 of 2019, High Court for the State of Telangana at Hyderabad.*
- j. Basanta Kumar Sahoo & Ors. vs. State of Orissa & Anr., CRLMC No.615 of 2023, High Court of Orissa at Cuttack.*
- k. Thomas and another vs. State of Kerala and others, 2016 CRI.L.J.1886.*

7. In **Sanjeev Kapoor vs Chandana Kapoor, in criminal appeal nos. 286 of 2020 (arising out of SLP (Crl.) No. 1041 of 2020), on 19 February, 2020**, the Supreme Court held:-

*“17. Learned counsel for the appellant has also referred to judgment of this Court in Mahua Biswas(Smt.) vs. Swagata Biswas and another, (1998) 2 SCC 359. In the above case, **in the proceedings under Section 125 Cr.P.C. parties compromised and started living together but later fell apart.** An objection was raised by the husband that order of maintenance could not be revived with which High Court agreed. This Court revived the maintenance application by allowing the appeal. In paragraph 3 following was held:*

*“3. The matter can be viewed from either angle. It can be viewed that there was a genuine effort by the wife to rehabilitate herself in her matrimonial home but in vain. The previous orders of maintenance in a manner of speaking could at best be taken to have been suspended but not wiped out altogether. The other view can be that the **maintenance order stood exhausted** and thus she be left to fight a new litigation on a fresh cause of action. Out of the two courses, we would prefer to adopt the first*

one, for if we were to resort to the second option, it would lead to injustice. In a given case the wife may then be reluctant to settle with her husband lest she lose the order of maintenance secured on his neglect or refusal. Her husband on the other side, would jump to impromptu devices to demolish the maintenance order in duping the wife to a temporary reconciliation. Thus, in order to do complete justice between the parties, we would in the facts and circumstances activate the wife's claim to maintenance and put her in the same position as before. Evidently, she has obtained a maintenance order at a figure which was taken into account by the Court of the C.J.M. Taking that into account, we order the husband to pay to his wife and the daughter a sum of Rs 1000 each, effective from 1-10-1997. The sum of Rs 12,000 which was earlier ordered by this Court to be paid to the wife and her daughter as arrears of maintenance shall be taken to have been duly paid upto 30-9-1997, irrespective of the rate of maintenance. This streamlines the dispute between the parties. It is made clear that it is open to the parties to claim such other relief as may be due to him/her by raising a matrimonial dispute before the matrimonial court."

30. We have noticed the judgment of this Court in *Mahua Biswas (Smt)(supra)* where this Court had activated the wife's claim of maintenance to put her at same position before parties compromised in proceeding under Section 125 Cr.P.C. Although learned counsel for the appellant submits that the judgment of this Court in *Mahua Biswa (Smt)* is not applicable, we do not agree with the submission. In the above case, order was passed by the Magistrate giving maintenance of token amount against which she moved to the High Court for revision where it was noticed that matrimonial case between the parties **had stood compromised and one of the terms was that wife would go and live with her husband.** The wife went to live with husband but later the spouse fell apart. Husband contended that the orders of maintenance could not be revived as there had arisen a fresh cause of action. The High Court had set aside the order of maintenance leaving the wife to approach again

the Criminal Court for appropriate relief. This Court allowing the appeal had activated the wife's claim of maintenance and put her in the same position as before. The above judgment clearly indicates that this Court adopted the Course which avoided injustice to the wife.

31. *We, thus, are of the considered opinion that the order passed in present case by Family Court reviving the maintenance application of the wife under Section 125 Cr.P.C. by setting aside order dated 06.05.2017 passed on settlement is not hit by the embargo contained in Section 362 Cr.P.C. The submission of learned senior counsel for the appellant that Section 362 Cr.P.C. prohibit the Magistrate to pass the order dated 05.01.2019 cannot be accepted.*

32. *The High Court did not commit an error in rejecting the application filed by appellant under Section 482 Cr.P.C. The inherent powers of the High Court given under Section 482 Cr.P.C. are to be exercised to secure the ends of justice. The Family Court in passing order dated 05.01.2019 has done substantial justice in reviving the maintenance application of the wife which need no interference by the High Court in exercise of its jurisdiction under Section 482 Cr.P.C.”*

8. In *Ruchi Agarwal vs Amit Kumar Agrawal & Ors., (2005) 3*

SCC 299, decided on November 5, 2004, the Supreme Court

held:-

“8. Learned counsel appearing for the appellant, however, contended that though the appellant had signed the compromise deed with the abovementioned terms in it, the same was obtained by the respondent husband and his family under threat and coercion and in fact she did not receive lump sum maintenance and her stridhan properties. We find it extremely difficult to accept this argument in the background of the fact that pursuant to the compromise deed the respondent husband has given her a consent divorce which she wanted, thus had performed his part of the obligation under the compromise deed.

Even the appellant partially performed her part of the obligations by withdrawing her criminal complaint filed under Section 125. It is true that she had made a complaint in writing to the Family Court where Section 125 CrPC proceedings were pending that the compromise deed was filed under coercion but she withdrew the same and gave a statement before the said court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. ***Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant.*** In our opinion, the conduct of the appellant indicates that the criminal complaint from which this ***appeal arises was filed by the wife only to harass the respondents.***

9. In view of the abovesaid subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue. Therefore, we are of the considered opinion to do complete justice, we should while dismissing this appeal also quash the proceedings arising from criminal case Cr. No. 224 of 2003 registered in Police Station Bilaspur (District Rampur) filed under Sections 498-A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act against the respondents herein. It is ordered accordingly. The appeal is disposed of.”

- 9.** The memorandum of settlement in the present case is dated 15th February, 2022. The proceedings in this case has been initiated in 2021 and **this revisional application has been filed on 25.02.2022 (after the settlement).** It is admitted by the **learned Senior Counsel appearing for the de facto complainant that the de facto complainant by virtue of the**

memorandum of settlement has received Rs.32,00,000/-. It is then submitted by Mr. Sahani that as there has been non-compliance on the part of the petitioners, the compromise has failed and as to returning the amount of Rs.32,00,000/- received by the de facto complainant, it is submitted that in order to get the money returned, the petitioners have to file appropriate proceedings, though it is further submitted that the wife as per law is entitled to the said amount for her expense and maintenance.

- 10. Admittedly the amount has been received by way of a settlement in this case which is a matrimonial dispute. The amount has not been received in a maintenance proceeding, wherein the husband could have/would have taken a defence against such claim.**
- 11.** Herein the amount has been received towards the compromise and the same has been paid by way of **part compliance** of the terms in the memorandum of settlement, on the basis of **Trust** and **having received the amount by way of settlement** and then going back on her words is a **clear case of breach of trust**, having taken the benefit of settlement and then pursuing the same case on the ground that the terms and conditions have

been allegedly violated, clearly goes **against the principle of natural justice.**

12. If a wife is entitled to maintenance as claimed by the opposite party no.2 / de facto complainant, then the husband has to be given an opportunity to defend the claim. Such indirect way of receiving money (on compromise) and then withdrawing the consent for compromise and continuing with the proceedings is prima facie an **abuse of process of law.**
13. The next contention in the present case is that the offences alleged herein include the offence under Section 377 of IPC. The de facto complainant herein **had** also submitted a **letter dated 04.03.2022 before the investigating officer stating that she does not wish to continue with the proceedings in the present case which includes the allegation of Section 377 of IPC.**
14. Learned counsel for the State has placed the case diary showing medical papers to prima facie substantiate the said charge under Section 377 of IPC against the petitioner no. 1.
15. Learned counsel for the petitioners submits that the said offence/Section does not apply to their relationship and has relied upon the following judgments:-

- i. *Manish Sahu versus State of Madhya Pradesh and another.*, 2024 SCC Online MP 2603.
 - ii. *Dr. Dhruvam Murlidhar Sonkar versus State of Maharashtra and Ors.*, (2019) 18 Supreme Court Cases 191.
 - iii. *Umang Singhar versus State of Madhya Pradesh*, 2023 SCC Online MP 3221.
 - iv. *Dt. Kirti Bhushan Mishra versus State of Uttrakhand and Another.*, 2024 SCC Online UTT 2023.
 - v. *Sanjeev Gupta versus State of U.P. and Another.*, 2024 CRI.L.J. 689.
 - vi. *The State of Madhya Pradesh vs Laxmi Narayan & Ors.*, 2019 (4) SCALE.
16. The Supreme Court in ***Navtej Singh Johar & Ors. vs Union of India Through Secretary Ministry of Law and Justice, WP (Criminal) No. 76 of 2016, on 6th September, 2018***, held as follows:-
- a. **Justice Dipak Misra and Justice A.M. Khanwilkar**, (Para 205-213), held as follows:-

"205. Let us, in the obtaining situation, conduct a comparative analysis of the offence of rape and unnatural offences as defined under Section 375 and Section 377 of the IPC respectively. Section 375 IPC defines the offence of rape and reads as under:-

Section 375. Rape-A man is said to commit "rape" if he —

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions: — First. —Against her will.

Secondly. —Without her consent.

Thirdly. —With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly. —With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. —With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. —With or without her consent, when she is under eighteen years of age.

Seventhly. —When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. — Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2. —Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.'

206. A cursory reading of Section 375 IPC divulges that it is a gender specific provision for the protection of women as only a man can commit the offence of rape. The Section has been divided into two parts. The former part, comprising of Clauses (a) to (d), simply describes what acts committed by a man with a woman would amount to rape provided that the said acts are committed in the circumstances falling under any of the seven descriptions as stipulated by the latter part of the Section.

207. It is in this way that the latter part of Section 375 IPC becomes important as it lays down the circumstances, either of which must be present, for an act committed by a man with a woman to come within the sweep of the offence of rape. To put it differently, for completing the offence of rape, any of the circumstances described in the latter part of Section 375 must be present. Let us now dissect each of the seven descriptions appended to Section 375 IPC which specify the absence of a willful and informed consent for constituting the offence of rape.

208. The first description provides that any of the acts described in the former part of Section 375 IPC would amount to rape if such acts are committed against the will of the woman. The second description stipulates that the acts described in the former part would amount to rape if such acts are committed without the consent of the woman. As per the third description, the acts would amount to rape even if the woman has given her consent but the said consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt. As per the fourth description, the acts would amount to rape when the woman has given her consent but the same was given by her under the belief that she is or believes herself to be lawfully married to the man committing the acts stated in the former part of the Section. The fifth description provides that the acts described in the former part would amount to rape if the woman gives her consent but at the time of giving such consent, she is unable to understand the nature and consequences of the acts to which she consents due to the reason of unsoundness of mind or intoxication or the administration of any stupefying or unwholesome substance either by the man who commits the acts or through another third person. The sixth description is plain and simple as it stipulates that the acts described in the former part of the Section would amount to rape, irrespective of the fact whether the woman has given her consent or not, if, at

the time when the acts were committed, the woman was below the age of eighteen years. Coming to the seventh and the last description, it provides that the acts prescribed in the former part would amount to rape if the woman is unable to communicate her consent.

209. Explanation 2 to Section 375 IPC gives the definition of consent for the purpose of Section 375 to the effect that consent means an unequivocal voluntary agreement by the woman through words, gestures or any form of verbal or non-verbal communication whereby she communicates her willingness to participate in any of the sexual acts described in the former part of Section 375 IPC.

210. We have scrutinized the anatomy of the seven descriptions contained in the latter part of Section 375 IPC along with Explanation 2 to Section 375 IPC to emphasize and accentuate that the element of absence of consent is firmly ingrained in all the descriptions contained in the latter part of Section 375 IPC and the absence of a willful and informed consent is sine qua non to designate the acts contained in the former part of Section 375 IPC as rape.

211. Presently, we proceed to scan the anatomy of Section 377 of IPC and x-ray the provision to study its real nature and content. It reads thus:-

—Section 377. Unnatural offences.—Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.||

212. Section 377 IPC, unlike Section 375, is a gender-neutral provision as it uses the word

‘whoever’. The word ‘carnal’, as per the Black’s Law Dictionary 84 , means of the body, relating to the body, fleshy or sexual. ‘Sexual intercourse’ has been defined in Black’s Law Dictionary as a contact between a male and a female’s organ.

213. Another expression which has been employed in Section 377 is ‘against the order of nature’. The phrase ‘against the order of nature’ has neither been defined in Section 377 IPC nor in any other provision of the IPC. The foundation on which Section 377 IPC makes carnal intercourse an offence is the precept that such carnal intercourse is against the order of nature. This brings us to the important question as to what is ‘against the order of nature’?”

b. Justice D. Y. Chandrachud (Para 156), held as follows:-

“156 We hold and declare that:

(i) Section 377 of the Penal Code, in so far as it criminalises consensual sexual conduct between adults of the same sex, is unconstitutional;

(ii) Members of the LGBT community are entitled, as all other citizens, to the full range of constitutional rights including the liberties protected by the Constitution;

(iii) The choice of whom to partner, the ability to find fulfilment in sexual intimacies and the right not to be subjected to discriminatory behaviour are intrinsic to the constitutional protection of sexual orientation;

(iv) Members of the LGBT community are entitled to the benefit of an equal citizenship, without discrimination, and to the equal protection of law;

and PART M

(v) The decision in Koushal stands overruled.

Acknowledgment Before concluding, I acknowledge the efforts of counsel for the petitioners and intervenors who appeared in this case – Mr Mukul Rohatgi, Mr Arvind Datar, Mr Ashok Desai, Mr Anand Grover, Mr Shyam Divan, Mr CU Singh and Mr Krishnan Venugopal, Senior Counsel; and Mr Saurabh Kirpal, Dr Menaka Guruswamy and Ms Arundhati Katju, and Ms Jayna Kothari, learned Counsel. Their erudition has enabled us to absorb, as we reflected and wrote. Mr Tushar Mehta, learned Additional Solicitor General appeared for the Union of India. We acknowledge the assistance rendered by the counsel for the intervenors who opposed the petitioners.”

c. Justice Indu Malhotra (Para 21), held as follows:-

“21. CONCLUSION i. In view of the aforesaid findings, it is declared that insofar as Section 377 criminalises consensual sexual acts of adults (i.e. persons above the age of 18 years who are competent to consent) in private, is violative of Articles 14, 15, 19, and 21 of the Constitution.

It is, however, clarified that such consent must be free consent, which is completely voluntary in nature, and devoid of any duress or coercion.

ii. The declaration of the aforesaid reading down of Section 377 shall not, however, lead to the re-opening of any concluded prosecutions, but can certainly be relied upon in all pending matters whether they are at the trial, appellate, or revisional stages.

iii. The provisions of Section 377 will continue to govern non-consensual sexual acts against adults, all acts of carnal intercourse against minors, and acts of bestiality.

iv. The judgment in Suresh Kumar Koushal & Anr.

*v. Naz Foundation & Ors.*⁵⁷ is hereby overruled for the reasons stated in paragraph 19.

57 (2014) 1 SCC 1 The Reference is answered accordingly.

In view of the above findings, the Writ Petitions are allowed.”

17. From the said judgment in ***Navtej Singh Johar & Ors. vs Union of India Through Secretary Ministry of Law and Justice (supra)***, this Court finds that an offence under **Section 375** of IPC is not made out against the husband/petitioner herein **in view of the explanation 2** to the said Section. But **Section 377 of IPC** relates to adult persons and **in the absence of consent**, the offence under Section 377 of the IPC is made out.
18. The prosecution under Section 377 of IPC lies **solely upon the matter of consensual sexual relationship**.
19. **Section 377 of IPC** has been **decriminalized** by the judgment in ***Navtej Singh Johar & Ors. vs Union of India Through Secretary Ministry of Law and Justice (supra)***, to the context of **consensual relationship**.
20. Though under Section 375 Explanation 2, the offence of rape is not made out between husband and wife, this Court has to decide as to the **matter of consent** between the parties herein

(two adults) so as to make out an offence under Section 377 of IPC, if any.

21. Section 5 of the Hindu Marriage Act, 1955, lays down:-

“5. Conditions for a Hindu marriage.-

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:

(i)neither party has a spouse living at the time of the marriage;

(ii)at the time of the marriage, neither party

*(a)is incapable of giving a **valid consent** to it in consequence of unsoundness of mind; or*

*(b)though capable of giving a **valid consent**, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or*

*(c)has been subject to recurrent attacks of insanity ***;*

(iii)the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;

(iv)the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v)the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

***”

22. Section 5 of the Hindu Marriage Act lays down that one of the conditions **for a valid marriage is consent. Without consent,**

which is an essential element or condition, the marriage is not a valid marriage.

- 23. Admittedly the marriage between the parties was an arranged one and thus a marriage on consent and as such the sexual relationship between the husband and wife in this case was based on consent, which can be termed as marital consent, which is precondition to a valid marriage.**
- 24. As such the ingredient required of ‘no consent’ to make out an offence under Section 377 of IPC is absent in the present case, as the relationship between the two adults who also happen to be husband and wife is based on marital consent. Therefore, being a consensual relationship, the offence under Section 377 is also not made out.**
- 25. In *Dara Lakshmi Narayana & Ors. vs State of Telangana & Anr., in Criminal Appeal No. of 2024 (arising out of SLP (Criminal) No. 16239 of 2024, decided on December 10, 2024*, the Supreme Court held:-**

“15. An offence is punishable under Section 498A of the IPC when a husband or his relative subjects a woman to cruelty, which may result in imprisonment for a term extending up to three years and a fine. The Explanation under Section 498A of the IPC defines “cruelty” for the purpose of Section 498A of the IPC to mean any of the acts mentioned in clauses (a) or (b). The first limb of clause (a) of the Explanation

of Section 498A of the IPC, states that "cruelty" means any wilful conduct that is of such a nature as is likely to drive the woman to commit suicide. The second limb of clause (a) of the Explanation of Section 498A of the IPC, states that cruelty means any wilful conduct that is of such a nature as to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. Further, clause (b) of the Explanation of Section 498A of the IPC states that cruelty would also include harassment of the woman where such harassment is to coerce 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.

16. Further, Section 3 of the Dowry Act deals with penalty for giving or taking dowry. It states that any person who engages in giving, taking, or abetting the exchange of dowry, shall face a punishment of imprisonment for a minimum of five years and a fine of not less than fifteen thousand rupees or the value of the dowry, whichever is greater. Section 4 of the Dowry Act talks of penalty for demanding dowry. It states that any person demanding dowry directly or indirectly, from the parents or other relatives or guardians of a bride or bridegroom shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees.

18. A bare perusal of the FIR shows that the allegations made by respondent No.2 are vague and omnibus. Other than claiming that appellant No.1 harassed her and that appellant Nos.2 to 6 instigated him to do so, respondent No.2 has not provided any specific details or described any particular instance of harassment. She has also not mentioned the time, date, place, or manner in which the alleged harassment occurred. Therefore, the FIR lacks concrete and precise allegations.

25. A mere reference to the names of family members in a criminal case arising out of a matrimonial dispute, without specific allegations indicating their

active involvement should be nipped in the bud. It is a well-recognised fact, borne out of judicial experience, that there is often a tendency to implicate all the members of the husband's family when domestic disputes arise out of a matrimonial discord. Such generalised and sweeping accusations unsupported by concrete evidence or particularised allegations cannot form the basis for criminal prosecution. Courts must exercise caution in such cases to prevent misuse of legal provisions and the legal process and avoid unnecessary harassment of innocent family members. In the present case, appellant Nos.2 to 6, who are the members of the family of appellant No.1 have been living in different cities and have not resided in the matrimonial house of appellant No.1 and respondent No.2 herein. Hence, they cannot be dragged into criminal prosecution and the same would be an abuse of the process of the law in the absence of specific allegations made against each of them.

28. *The inclusion of Section 498A of the IPC by way of an amendment was intended to curb cruelty inflicted on a woman by her husband and his family, ensuring swift intervention by the State. However, in recent years, as there have been a notable rise in matrimonial disputes across the country, accompanied by growing discord and tension within the institution of marriage, consequently, there has been a growing tendency to misuse provisions like Section 498A of the IPC as a tool for unleashing personal vendetta against the husband and his family by a wife. Making vague and generalised allegations during matrimonial conflicts, if not scrutinized, will lead to the misuse of legal processes and an encouragement for use of arm twisting tactics by a wife and/or her family. Sometimes, recourse is taken to invoke Section 498A of the IPC against the husband and his family in order to seek compliance with the unreasonable demands of a wife. Consequently, this Court has, time and again, cautioned against prosecuting the husband and his family in the absence of a clear prima facie case against them.*

29. *We are not, for a moment, stating that any woman who has suffered cruelty in terms of what has been contemplated under Section 498A of the IPC should remain silent and forbear herself from making a complaint or initiating any criminal proceeding. That is not the intention of our aforesaid observations but we should not encourage a case like as in the present one, where as a counterblast to the petition for dissolution of marriage sought by the first appellant-husband of the second respondent herein, a complaint under Section 498A of the IPC is lodged by the latter. In fact, the insertion of the said provision is meant mainly for the protection of a woman who is subjected to cruelty in the matrimonial home primarily due to an unlawful demand for any property or valuable security in the form of dowry. However, sometimes it is misused as in the present case.*

30. *In the above context, this Court in **G.V. Rao vs. L.H.V. Prasad, (2000) 3 SCC 693** observed as follows:*

“12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their “cases” in different courts.”

31. *Further, this Court in **Preeti Gupta vs. State of Jharkhand (2010) 7 SCC 667** held 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. The allegations of harassment by the husband's close relatives who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinized with great care and circumspection.

32. *We, therefore, are of the opinion that the impugned FIR No.82 of 2022 filed by respondent No.2 was initiated with ulterior motives to settle personal scores and grudges against appellant No.1 and his family members i.e., appellant Nos.2 to 6 herein. Hence, the present case at hand falls within category (7) of illustrative parameters highlighted in **Bhajan Lal**. Therefore, the High Court, in the present case, erred in not exercising the powers available to it under Section 482 CrPC and thereby failed to prevent abuse of the Court's process by continuing the criminal prosecution against the appellants."*

26. It appears from the materials in the case diary that the allegations are general in nature and the ingredients to constitute the offences alleged are prima facie not present in respect of the petitioners herein and as such the proceeding is liable to be quashed in the interest of Justice.

27. CRR 627 of 2022 is thus allowed.

28. The proceeding being ACGR case no.4836 of 2021 arising out of Haridevpur PS case no.299 of 2021 dated 01.12.2021 under Sections 498A, 406, 323, 324, 506, 377 and 307 read with Section 34 of the Indian Penal Code, 1860 read with Section 4 of the Dowry Prohibition Act pending before the learned Additional Chief Judicial Magistrate at Alipore, **is hereby quashed in**

respect of the petitioners namely Vishnu Saraf and Leela Saraf @ Leela Devi Saraf.

- 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 Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

[Shampa Dutt (Paul), J.]