

16.01.2025

Sl. No.: 13

Court No.30
BM

CRR 1425 of 2023

Krishnendu Ganguly & Ors.

Vs.

The State of West Bengal & Anr.

Mr. Anindya Sundar Chatterjee

Mr. Sandip Ray

... for the petitioners

Ms. Puspita Saha

... for the State

Mr. Subhasree Patel

Mr. Soham Banerjee

... for the opposite party no.2

- 1.** The present revisional application has been preferred praying for quashing of proceeding arising out of Nabadwip PS case No.120/15, under Sections 498(A)/323/406/34 of the Indian Penal Code, 1860, pending before the learned Judicial Magistrate, 1st Class, Nabadwip, Nadia.
- 2.** Heard the learned counsel for the petitioner and the defacto complainant who submit that the couple in the present case have divorced.
- 3.** As there is none appearing for the State, Ms. Puspita Saha, learned counsel for the State present in court is appointed to represent the State in this case. Let her appointment be regularised by the competent authority.
- 4.** The petitioners in this case are the relatives of the husband of the defacto complainant. The parties were married in the year 2014 and the present case was initiated in the year 2015 within one year of marriage. The allegations are under Section 498A/406/506/34 of the Indian Penal Code.
- 5. The allegations in the written complaint are as follows :-**

“.....That on 16.03.2015 complainant lodged a written complaint the effect is that on 20.07.2014 complainant’s marriage was held with one Chandan@Chandi Sarkar by registry & festival was held on 01.08.2014 as per Hindu Customs. During marriage father of complainant gave cash Rs.2,00,000/-, gold made ornaments of 6 bhories, almirah, showcase, utensils & other things to accused persons as dowry. After marriage complainant went to the husband’s house and used to live as husband and wife with Chandan @ Chandi Sarkar. During that period complainant understand that her husband is not fit physically. She told her husband consulting this with Doctor over that issue accused persons used torture upon complainant both physically and mentally and claimed Rs.1,00,000/- from her father, but father of complainant could not fulfil their demand as a result accused persons used more torturing on complainant. Confined her into room, also tried to kill her by kerosene with fire. Then she was driven from her husband’s house keeping all streedhan. Complainant lodged GDE at Women PS Krishnagar vide No.305/14. On 08.03.15 at about 09.00 hrs. accused persons entered into house of complainant’s father and threatened complainant for withdraw said G.D.E No.305/14. Complainant assumed Women P.S. take action so this delay to lodge complaint.....”

6. Section 498A IPC, 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 sec 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.”

7. 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.”

8. 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.

9. On hearing the learned counsel for the parties and in considering the materials on record, it appears that the allegation are general in nature and do not constitute ingredients required to make the offence as alleged in the present case against the petitioners herein.

10. Learned counsel appearing for the defacto complainant has also fairly submitted that parties are now divorced and have moved on in life.
11. **CRR 1425 of 2023 is thus allowed.**
12. The proceeding arising out of Nabadwip PS case No.120/15, under Sections 498(A)/323/406/34 of the Indian Penal Code, 1860, pending before the learned Judicial Magistrate, 1st Class, Nabadwip, Nadia, **is hereby quashed in respect of the petitioners namely Krishnendu Ganguly, Durga Sarkar@ Ganguly, Tushar@ Samir Haldar and Ashima Sarkar@ Haldar.**
13. All connected Applications, if any, stand disposed of.
14. Interim order, if any, stands vacated.
15. Copy of this Order be sent to the learned Trial Court for necessary compliance.
16. Urgent certified website copy of this Order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)