

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 2155 of 2022

**Shri Pintu Dey & Ors.
Vs.
The State of West Bengal & Anr.**

For the Petitioners	:	Mr. Sourav Chatterjee Mr. Pawan Gupta Mr. S. Mitra Mr. N.K. Gupta Ms. Soma Chakraborty Ms. Sofia Nesar Mr. Santanu Sett
For the Opposite Party no.2	:	Mr. Malay Bhattacharyya Ms. Sudipa Sengupta
For the State	:	Mr. Imran Ali Ms. Debjani Sahu
Heard on	:	15.07.2025
Judgement on	:	11.09.2025

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioners herein have challenged the impugned proceeding being Sonamukhi PS case no. 102 of 2021 dated 12.07.2021 under section 498A/323/313/307 of Indian Penal Code (IPC) read with section 3 and 4 of the Dowry Prohibition Act (D.P Act). The aforesaid criminal proceeding

started on the basis of a petition of complaint filed by opposite party no. 2 herein under section 156(3) of Cr.P.C. However, after completion of investigation prosecution agency has submitted charge sheet against the present petitioners under the aforesaid sections except section 307 IPC and the court below has taken cognizance upon the said offences.

2. *De facto* complainant/opposite party no. 2 is the wife and the petitioner no. 1 is the husband and petitioner no. 2 is the Mother-in-law and the petitioner no. 3 is elder-brother-in-law of the opposite party no. 2 by virtue of the matrimonial relationship between the parties which was sermonized on 09.07.2012. After marriage opposite party no. 2 and petitioner no. 1 started residing at matrimonial house of complainant at Purulia. They are also blessed with a male child but thereafter trouble started and the *de facto* complaint/opposite party had lodged the instant complaint.

3. Being aggrieved by the impugned proceeding Mr. Sourav Chatterjee learned counsel appearing on behalf of the petitioners submits that petitioner no. 2 is a senior citizen and she is suffering from physical deformities. He further submits that on perusal of complaint and other material, it appears that not a single aspersion has been made against the petitioner no. 3 and nothing was seized or collected during investigation to justify the prosecution case as well as the charge levelled against the petitioners. He further submits that the allegations levelled in the complaint do not make out any case against the petitioners under section 498A/313/323 of the IPC.

4. Mr. Chatterjee further submits that the present case has been filed in suppression of material fact and has been accentuated with manifest *mala fides* and same was instituted in order to spite the petitioners for sinister purpose. There is nothing in the record to show that the complainant was ever subjected to any kind of torture for dowry demand or any alleged torture were ever made to such an extent to attract the essential ingredients of section 498A of the IPC.

5. The allegations of miscarriage under section 313 of the IPC is not attributable to the petitioners and on the contrary the *de facto* complainant at her own terminated her pregnancy while she was at her paternal home and suppressed the same to the petitioners for a long time. Infact *de facto* complainant in her application for custody of child at paragraph 7 clearly admitted that the abortion was done at her own instance. The prescription of doctor as seized by police totally belies the case of the prosecution. Infact learned Magistrate did not show any reason in support of taking cognizance of the offence though under the law the magistrate is legally bound to go through the contents of the allegation brought against the accused persons before taking cognizance. The impugned order taking cognizance does not suggest that he had at all applied his judicial mind.

6. The falsity and privity is apparent from the fact that the complainant/opposite party no. 2 got married on 09.07.2012 but the instant case has been registered on 12.07.2021 i.e. after 9 years of marriage. Mr. Chatterjee further contended that opposite party no. 2 did not comply with the mandatory provision of section 154(1) and 154(3) of the Cr.P.C. and straight way made an application under section 156(3) of the Cr.P.C. and

the court below mechanically allowed such application ignoring the fact that the application under section 156(3) is not supported by an affidavit, in compliance with the direction made by the Apex Court in ***Priyanka Srivastava Vs. State of U.P*** reported in **(2015) 6 SCC 287**. Though the petitioners were initially also booked under section 307 of the IPC but while submitting charge sheet, prosecution has dropped the allegation under section 307 IPC.

7. Mr. Chatterjee further argued that the allegations against the husband and his parents are omnibus and is a glaring example of misuse of provision of section 498A of the IPC. Learned counsel for the petitioner in support of his argument relied upon the following judgments:

- I) ***Achin Gupta Vs. State of Harayana and Anr***, reported in **2024 SCC OnLine SC 759**
- II) ***Digambar & Anr. Vs. State of Maharashtra & Anr***, reported in **2024 SCC OnLine SC 3836**
- III) ***Priyanka Srivastava & Anr. Vs State of Uttar Pradesh & Ors.***, reported in **(2015) 6 Supreme Court Case 287**
- IV) ***Babu Venkatesh & Ors Vs. State of Karnataka & Anr.*** reported in **(2022) 5 SCC 639**
- V) ***Dara Lakshmi Narayana & Ors. Vs State Of Telengana and Anr.*** reported in **(2025) 3 SCC 735 : 2024 SCC OnLine SC 3682**

Learned counsel for opposite party no. 1 & 2 submits that there are sufficient grounds to proceed with trial on the basis of materials collected during investigation and it would not be proper to quash the proceeding

invoking jurisdiction under section 482 Cr.P.C. at its threshold without giving an opportunity to the prosecution to prove its case.

Decision

8. Before going to further details let me reproduce crux of the allegations levelled in the petition of complaint filed under section 156(3) of the Cr.P.C which was subsequently treated as an FIR

- (i) the opposite party no. 2 herein got married to petitioner no. 1 on 09.07.2012 and at the time of the marriage as per demand of the petitioners Rs. 2,00,000/- along with gold jewellery, furniture and other articles were given to the petitioners.
- (ii) Few days after marriage *de facto* complainant was further pressurised to bring a sum of Rs. 4,00,000/- and on failure to meet such demand the parents of the complainant were abused in filthy languages.
- (iii) Subsequently over minor issues, the complainant was assaulted by the petitioner no. 1.
- (iv) While the *de facto* complainant was pregnant she was not given proper medical assistance and was sent to her paternal home.
- (v) After the birth of child, petitioner no. 1 herein upon the persuasion of petitioner no. 2 and 3 brought the *de facto* complainant back to her matrimonial home but thereafter again she was subjected to torture.
- (vi) When the son of the *de facto* complainant was one year old petitioner number 1 on the provocation of petitioner no. 2 gave the custody of the son to petitioner no. 2 and when *de facto*

complainant objected to such incident she was assaulted by the petitioner no. 1 with a belt and was further threatened with dire consequences, if she discloses such incident to her parents.

(vii) In 2015 opposite party no. 2 became pregnant and that time petitioner no. 1 without informing *de facto* complainant/opposite party no. 2 gave her contraceptive pills which she learnt on the next day and upon protest she was further subjected to torture. She was taken to Dr. B. Chakraborty where she was compelled to abort the child.

(viii) In spite of such torture the *de facto* complainant continued her conjugal life.

(ix) She was not allowed to keep in touch with her parents.

(x) On 29.10.2020 while *de facto* complainant was talking to her parents over phone, petitioner no. 1 noticing such incident assaulted her and such torture continued for some days.

(xi) Finally *de facto* complainant/opposite party no. 2 finding no alternative returned to her paternal house where she has been residing.

9. From the facts and circumstances of the case it appears that the opposite party no.2/complainant got married with the petitioner no.1 herein on 09.07.2012 but the instant case has been registered nine years after her marriage on 12th July, 2021. It is further apparent that during this nine years not a single complainant was lodged by the complainant/wife before any authority. No medical paper could be placed to substantiate the allegation of physical torture during the said period of nine years. In the FIR

no specific date time or place regarding the alleged torture has also been mentioned. It further appears that though initially the petitioners were booked under section 307 IPC along with the other sections, but the investigating agency while submitting the charge sheet dropped the graver charge under section 307 of IPC. It also appears that the petitioners are charge sheeted *interalia* under section 313 of the IPC with the allegation of causing forceful miscarriage of the victim. From the medical report as collected by the investigating agency during investigation, it clearly transpires that the attending doctor has specifically stated that at the time of treatment of the complainant/opposite party no.2 herein, she did not make any allegation of physical assault or forcible miscarriage and that treatment was done at her parental house at Bankura, which raises a serious doubt on the allegation as to how forcible miscarriage was caused by the present petitioners. It is also curious enough that though the opinion of the said doctor was taken by the police but that has not been made part of the case diary nor the concerned doctor has been made witness in the instant case.

10. In fact in the entire complaint, the complainant/opposite party no.2 nowhere disclosed the cause of delay in lodging the FIR. There is also no specific allegation against the family members of the husband/petitioner no.1 and only to implicate such family members omnibus allegations are brought.

11. Needless to reiterate that in the instant case the petitioner lodged the complaint under section 156(3) of the Cr.P.C. before Magistrate and the case record states that such complaint though filed on 08.07.2021, but such

complaint is not supported by affidavit and not even a verification was made at the end of the complaint. Learned Trial court on the basis of such complaint which is not supported by affidavit asked the concerned Officer in charge of the police station to start investigation.

12. Since such complaints under section 156(3) of the Cr.P.C. were being filed in a routine manner without taking any responsibility whatsoever and only to harass certain persons, the Apex Court in **Priyanka Srivastava Vs. State of U.P. (2015) 6 SCC 287** held in paragraph **30** and **31** as follows:-

***30.** In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.*

***31.** We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in *Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524]* are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.*

13. The record reveals that in the instant case opposite party no.2 did not comply with the mandatory provisions of section 154(3) Cr.P.C. of and he straightway made the complaint under section 156(3) of the Cr.P.C. not

supported by affidavit, but learned magistrate mechanically allowed such application and directed to start investigation which gave rise to the instant criminal proceeding.

14. The Apex Court in subsequent judgment in ***S.N. Bijay Laxmi and others Vs. State of Karnataka and another*** reported in **2025 live Law SC 758** while clarified the law laid down in **Priyanka Srivastava** (supra) have summed up their Lordships conclusion as follows:-

- (i)** Directions issued in Priyanka Srivastava (surpa) are mandatory
- (ii)** Guidelines laid down in Priyanka Srivastava (supra) operate prospectively.
- (iii)** Non filing of supporting affidavit is a curable defect but must be cured before the magistrate passes any substantive order on the complaint application
- (iv)** If the magistrate proceeds without the requisite affidavit such order/any consequential orders/proceedings can be quashed on the sole ground of non-compliance with Priyanka Srivastava (supra).

15. On a conjoint reading of the provisions laid down in section 154, 156 and 190 of the Cr.P.C., it is clear that an informant, who wants to report about commission of a cognizable offence has to, in the first instance approach to the officer in charge of the police station for setting the criminal law into motion by lodging an FIR and if such information is not accepted by the concerned police officer or refuses to record it, the remedy of the complainant is to approach the superintendent of police of the District. Only after availing such opportunities, if he remained unsuccessful, then only he

may approach Magistrate under section 156 (3) Cr.P.C. for necessary action or of taking cognizance in accordance with section 190 of the Cr.P.C. In the instant case there is nothing to show that the FIR maker has complied the mandatory provisions of section 154 of the Code but when the charge sheet was submitted the court took cognizance of the offence under section 498A/323/313 of IPC on 24th January, 2022.

16. The court below did not consider the well-recognized principle of law that the persons aggrieved must first exhaust the aforesaid remedies available to him under the law referred in section 154 before approaching the court of law under section 156(3) of the Cr.P.C. and he cannot ordinarily approach the court directly. In the facts and circumstances of the case, as the informant herein had directly moved the Magistrate under section 156(3) of the Cr.P.C. without exhausting the statutory remedies, the magistrate, ought to have avoided taking action on the said application and could have refused to direct for the registration of the FIR. The Magistrate by his order has not only directed for the registration of the FIR in utter disregard of the law laid down in **Priyanka Srivastava** case (supra) which were also approved in subsequent cases but also he has exercised his power under section 190 of the Cr.P.C. by taking cognizance of the offences on 24.01.2022.

17. To attract section 323 IPC, there must be cogent evidence to establish (1) that the victim was actually hurt (2) that the hurt was voluntarily caused by the accused/petitioners and (3) that such hurt can be proved through direct evidence/circumstantial corroboration or medical records. The hurt must be real nor speculative or presumed and the intention to cause hurt

must be evident from the conduct of the accused and the resulting physical harm. In the instant case, although the complainant in her complaint, as extracted above has alleged that petitioner No.1/husband and other petitioners have assaulted her through various means but such ascertains are neither specific in terms of date, time and place nor supported by credible medical or evidentiary material. Moreover it is also to be kept in mind that assertion about voluntarily causing hurt has been alleged by a disgruntled wife after nine years of marriage without having any specification or through direct evidence or circumstantial corroboration.

18. Similarly the expression 'cruelty' in section 498A covers conduct which may drive the woman to commit suicide or cause of grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. In the instant case a mere omnibus statement has been made that the physical and mental cruelty was inflicted as she was talking to her parents over phone or on failure on her part to meet petitioner's demand to bring a sum of Rs. 4,00,000/-. The allegations against petitioners other than husband are mainly about instigation but no specific or precise instances are mentioned.

19. It is now well-settled that 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 (***Dara Lakshim Narayan and others Vs. State of Telangana & another*** reported in **2024 SCC Online SC 3682**). Therefore merely stating in the complaint that cruelty has been inflicted by the petitioners herein due to some reason, would not amount to the offence under section 498A of IPC.

20. As I have stated above a bare perusal of allegation of causing forceful miscarriage by the petitioners, when compared with the statement of doctor, it reveals that even if the allegations are accepted at the face value, it does not *prima facie* make out any case under section 313 IPC against the petitioners.

21. Therefore, I do not find any criminal aspect in the allegations *ex facie*.

22. The directions made by Apex court in ***Priyanka Srivastava (supra)*** though a procedural requirement but has been categorically held to be mandatory in substance. In the later judgment in ***S.N. Vijay Laxmi and Ors. Vs. State of Karnataka and another*** reported in 2025 INSC 917, Apex Court distilled and reaffirmed the binding nature of ***Priyanka Srivastava***. While holding that the affidavit requirement is a mandatory pre condition for invoking the jurisdiction of the magistrate under section 156(3), the court also clarified that the defect is curable, provided it is rectified before the magistrate passes any substantive order on the complaint. It further held in that requirement under ***Priyanka Srivastava*** (*supra*) is to safeguard the rights of the citizenry and to put a stop to unjust criminal action and filing upon vaxious applications to settle personal scores and thus such requirement cannot be said to be a mere formality.

23. Infact what culled out in ***S.N. Bijay Laxmi*** (*Supra*) is that the aforesaid requirement serves as a crucial procedural safeguard aimed at ensuring that the criminal process is not lightly invoked without due responsibility or accountability on the part of the complainant. The affidavit acts as the self-certifying threshold, discouraging frivolous or *malafide*

applications and making the complainant personally answerable for the truth of the allegations made.

24. If a law requires something to be done in a specific manner, and that initial step is not followed, the entire proceeding is bad in law on the principle that if the foundation of a legal action is invalid, the entire structure, built upon it is also invalid, particularly in situation like this where a court takes cognizance of an offence without proper legal grounds or authorization. In the instant case no affidavit was filed at all and the safe guard has not been merely overlooked by the court below but has been completely bypassed which cannot be called as trivial irregularity because it strikes at the very legitimacy of the magistrate's act of directing registration of the FIR and thereafter taking cognizance upon the offences after completion of investigation. Where the initiation of a proceeding is legally flawed due to lack of jurisdiction, violation of law or failure to follow due process, all subsequent, consequential proceedings are deemed to fail automatically.

25. Upon consideration of the submissions advanced by learned Counsel for the parties and also on perusal of the materials placed on record and in view of the fact that the materials placed before me does not constitute offences alleged in the FIR and keeping it in mind that the legal principle and practice settled by the Apex court in ***Priyanka Srivastava Vs. State of U.P.*** (supra) and ***S.N. Vijay Laxmi and ors. Vs. State of Karnataka and another*** (supra), has been grossly flouted I am of the view that the complaint filed under section 156 (3) Cr.P.C. upon which the Magistrate had directed to start investigation and after completion of investigation took

cognizance upon the offences forms a fatal procedural defects. Moreover materials collected during investigation does not constitute offences upon which the cognizance can be taken as discussed above. The chance of conviction of the present petitioners is therefore bleak and continuance of further proceeding would be a mere abuse of the process of court.

26. In such view of the matter the CRR 2155 of 2022 is allowed. The instant criminal proceeding being Sonamukhi P.S. case no. 102 of 2021 dated 12.07.2021, corresponding to GR Case No.605 2021 presently pending before Learned Additional Chief Judicial Magistrate, Bishnupur, Bankura is hereby quashed.

27. Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)