

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2946 of 2022

Achyut Bhadra & Anr.

Versus

The State of West Bengal & Another

For the Petitioners : Mr. Kamalesh Chandra Saha. Adv.
Mr. M. Saha, Adv.
Mr. S. Saha, Adv.
Ms. Payel Mitra, Adv.

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

Heard on : 25.02.2025

Judgment on : 28.03.2025

Ajay Kumar Gupta, J:

1. This is an application under Section 482 of the Code of Criminal Procedure, 1973 filed by the petitioners being the accused persons seeking quashing of the proceeding being ACGR No. 3029 of 2022 arising out of Patuli P.S. Case No. 146 dated 13.07.2022 under Sections 498A/506/34 of the Indian Penal Code, 1860 pending before the Learned Additional Chief Judicial Magistrate, Alipore.

2. The brief facts of the case are essential for the purpose of disposal of this case as under: -

2a. Petitioner No. 1 is the husband and Petitioner No. 2 is the mother-in-law of the Opposite Party No. 2. The petitioner no. 1 married opposite party no. 2 in the year 2015 and started living in the matrimonial home, where their conjugal life was consummated. In 2016, she became pregnant. However, on 2nd February, 2017, the de-facto complainant/opposite party no. 2 left the matrimonial home. During this period, the petitioner no. 1 filed several cases against the opposite party no. 2, most of which were dismissed. Despite these circumstances, she returned to the matrimonial home in the month of February, 2022 primarily for sake of child. However, same ill-treatment and torture from the petitioners resumed.

2b. The opposite party no. 2 had lodged a written complaint on 13.07.2022 to the Officer-in-Charge of Patuli P.S. alleging, *inter alia*, therein that from the very beginning both the petitioners had been torturing her physically from outset of marriage. She claimed that the abuse intensified during her pregnancy, leading her to leave the matrimonial home. After returning in 2022, she continued mistreatment. On 4th July, 2022, during her birthday ceremony, the petitioner no. 1 allegedly came to her parental house, subjected her to further torture and threatened her with dire consequences and also attempted to forcibly take the child on 11th July, 2022 at about 8.50 PM. Additionally, mother-in-law i.e. petitioner no. 2 allegedly threatened to prevent her from returning to the matrimonial home if she remained in her parental home.

2c. Furthermore, the opposite party no. 2 claimed that the petitioner no. 1 never contributed towards household expenses including child's schooling, groceries and electricity bill or medical needs.

2d. On the basis of said written complaint, an FIR being Patuli P.S. Case No. 146 dated 13.07.2022 under Sections 498A/506/34 of the Indian Penal Code, 1860 has been registered against the present petitioners and investigation was initiated. In course of investigation,

the investigating officer issued notices under Section 41(A) of the CrPC and upon receipt of the said notices, both the petitioners complied with the same and, subsequently, surrendered before the Learned Chief Judicial Magistrate on 24.07.2023 and the Learned Magistrate granted interim bail which was later confirmed.

2e. According to the petitioner no. 1, he had filed a petition for custody of the minor child being Misc. Case No. 209 of 2017 (Act – VIII) before the Learned 3rd Additional District Judge, Barasat, North 24-Parganas and also filed an application under Section 11 of the Hindu Marriage Act against the opposite party no. 2 being Mat Suit No. 115 of 2021 before the Learned District Judge at Barasat, seeking a declaration that the marriage is null and void. In retaliation, the opposite party no. 2 allegedly lodged a false and fabricated written complaint with an allegation against the Petitioners for committing offences though they are innocent and they did not commit any offence. Petitioner no. 2, suffers from the old age ailments and petitioner no. 1 have been falsely implicated into this case only to harass them for her illegal personal gain. Hence, this Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONERS:

3. Learned counsel along with others appearing on behalf of the petitioners submitted that the proceedings are frivolous and FIR lodged against the petitioners does not disclose any cognizable offence. The opposite party no. 2 voluntarily left the matrimonial home on 07.02.2017 and subsequently took her all belongings on 03.11.2017 but after lapse of approximately 5 years, she lodged false and fabricated complaint as such the proceeding started thereof is an abuse of process of law. Hence, the proceeding is liable to be quashed. The allegations made by the opposite party no. 2 are out and out false.

3a. The petitioner no. 1 had previously lodged a case against the opposite party no. 2 being Madhyamgram P.S. Case No. 273 of 2017 dated 19.07.2017 under Sections 420/120B of the IPC because the opposite party no. 2 had suppressed her earlier marriage and cheated him by hiding the said fact. When the opposite party no. 2 left the matrimonial home she gave various reasons for her departure but failed to return for extended period. After investigation/enquiry, petitioner no. 1 discovered that opposite party no. 2 had been previously married to one Abhijit Kumar Barua and had a daughter named Nehalia Barua, who is now aged about 11 years, who resides

with the accused no. 2, Smt. Anumita Sarkar. The opposite party no. 2 married with the present petitioner no. 1 for the second time suppressing the earlier marriage with an intent to deceive him for wrongful gain.

3b. On the basis of direction passed by the Learned Magistrate, Barasat, the aforesaid Madhyamgram P.S. Case No. 273 of 2017 dated 19.07.2017 under Sections 420/120B of the IPC has been started against the opposite party no. 2 as accused no. 1 and Smt. Anumita Sarkar as accused no. 2.

3c. The petitioner no. 1 also filed an application for custody of the minor child being Misc. Case No. 209 of 2017 (Act – VIII) pending before the Learned 3rd Additional District Judge, Barasat, North 24-Parganas.

3d. It was further submitted that the petitioner no. 1 discovered through an order dated 2nd March, 2017 that the marriage between the opposite party no. 2 and Abhijit Kumar Barua was dissolved on mutual consent with a decree of divorce granted. Based on the said facts, the petitioner no. 1 filed a Matrimonial Suit against the opposite party no. 2 when she left the matrimonial home in the year 2017. Upon reviewing the written complaint, it is evident that no cognizable offence is disclosed nor ingredients are fulfilled under

Sections 498A/506 of the IPC. Accordingly, the same is liable to be quashed for securing ends of justice.

3e. Learned counsel has placed reliance of judgments to support of his contention that if FIR and Charge Sheet do not disclose any cognizable offence or ingredients of the offences then proceeding deserves to be quashed. The said judgments are as under: -

i. Sasanka Sekhar Mondal and Ors. Vs. Aditi Mondal Ghosh and Anr.¹;

ii. Wyeth Limited & Ors. Vs. State of Bihar & Anr.²;

iii. Minu Kumari and Anr. Vs. The State of Bihar and Ors.³.

4. None appears on behalf of the opposite party no. 2 at the time of call.

SUBMISSION ON BEHALF OF THE STATE:

5. Learned counsel appearing on behalf of the State produced the case diary and further submitted that during investigation, sufficient materials were collected against the present petitioners and prima facie case has been established under Sections 498A/506/34

¹ 2023 (1) AICLR 39 (Cal.)

² 2023 (1) AICLR 137 (S.C.)

³ 2006 (4) SCC 359 : AIR 2006 Supreme Court 1937.

of the IPC against the present petitioners. Accordingly, a Charge Sheet being No. 111/2022 dated 07.08.2022 has been filed against both the petitioners. After going through the materials available in the case diary, the Learned Court below took cognizance and initiated proceeding against the present petitioners. Therefore, this Criminal Revisional application has no merits and is liable to be dismissed.

DISCUSSION AND FINDINGS BY THIS COURT:

6. Heard the arguments and submissions made by the learned counsels appearing for the parties and upon perusal of the record as well as case diary, this Court finds the allegations made against the petitioners are general and omnibus. No specification of date, time and place are mentioned with regard to the physical torture or any other types of torture.

7. To constitute the offence under Sections 498A/506/34 of the IPC, some essential ingredients are required to be fulfilled. To ascertain the same, this Court would like to refer both the sections and their ingredients for ready reference and proper decisions of this case as under: -

S. 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 purposes 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:

(a) The woman must be married;

*(b) She must be subjected to cruelty or harassment;
and*

(c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

(d) Cruelty may be physical, mental, emotional and financial harassment that endanger woman’s health or life.

S. 506:- Punishment for criminal intimidation.-

Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc

– And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Ingredients:

The offence of criminal intimidation has been defined under Section 503 of the IPC, Section 506 provides punishment for it.

An offence under Section 503 has following essentials:

1. Threatening a person with any injury;

(i) to his person, reputation or property; or

(ii) to the person, or reputation of any one in whom that person is interested.

2. The threat must be with intent;

(i) to cause alarm to that person; or

(ii) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat; or

(iii) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

S. 34. Acts done by several persons in furtherance of common intention. —When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

Ingredients:

To establish joint liability under Section 34 of the Indian Penal Code (IPC), the prosecution must prove that a criminal act was committed by several persons in furtherance of a common intention.

8. Upon perusal of the record, it appears that the marriage between the petitioner no. 1 and opposite party no. 2 was her second marriage. The opposite party no. 2 had earlier married with one Abhijit Kumar Barua and their marriage was dissolved by a decree of divorce on 07.02.2017 after second marriage. From that marriage, a child was also born and she is now 11 years old. According to the

petitioner no. 1, this fact was suppressed at the time of second marriage. Accordingly, the petitioner no. 1 had filed Court complaint under Section 200 of the CrPC against the opposite party no. 2 under Section 420/120B of the I.P.C and after considering the facts and circumstances, the Learned Magistrate directed the police authority to register an FIR. Accordingly, a Madhyamgram P.S. Case no. 273/17 dated 19.05.2017 under Sections 420/120B of the Indian Penal Code started and initiated investigation against her.

9. Additionally, the petitioner no. 1 has also filed a petition for custody of the minor child being Misc. Case No. 209 of 2017 (Act – VIII) pending before the Learned 3rd Additional District Judge, Barasat, North 24-Parganas and also filed an application under Section 11 of the Hindu Marriage Act against the opposite party no. 2 being Mat Suit No. 115 of 2021 before the Learned District Judge at Barasat seeking a declaration that the marriage is null and void. After filing those cases, the opposite party no. 2 lodged a written complaint in the year 2022 despite she was not residing with the petitioners. Be that as it may, she alleged the incident of tortures in the year 2016, 2017 and 2022, but failed to specify the details of the torture inflicted by the petitioners. No specific role was attributed against the Petitioners. Mere allegations of physical torture are insufficient to initiate proceeding against the present petitioners.

10. Upon careful perusal of the written complaint, it reveals that allegations against the Petitioners are vague. After marriage, the accused persons/petitioners in furtherance of their common intention allegedly subjected to torture upon the opposite party no. 2 both physically and mentally and also threatened her with dire consequences. However, no specific or particulars of date, time and manner of torture have been disclosed. Furthermore, during investigation, it does not prove that her mother-in-law tortured or threatened her in any manner. No specific role has been attributed against the present petitioners with regard to torture either physically or mentally, no demand whatsoever made by the petitioners even then charge sheet has been submitted by the Investigating Officer. During investigation, the Investigating Officer recorded the statements under Section 161 of CrPC of available witnesses. From the perusal of the statements, it reveals that they only stated they have heard from the opposite party no. 2's parents about the torture perpetrated upon the opposite party no. 2 by her husband and mother-in-law.

11. This Court also does not repose confidence about the allegations, levelled by the opposite party no. 2/wife rather prima facie appears she suppressed her earlier marriage. The allegation has not been supported by any sufficient materials to constitute an

offence punishable under Sections 498A/506/34 of the Indian Penal Code, 1860. The accusations made by the opposite party no. 2/wife are general, omnibus in nature and also not distinct.

12. Furthermore, an application under Section 12 of the PWDV Act was filed by the Opposite Party No. 2 against the petitioners before the Ld. Magistrate at Alipore but the same was dismissed.

13. The charge sheet has not revealed any evidence collected during the investigation that they had torture upon her. Hence, this Court is of the opinion that if such proceedings continue against the petitioners, 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.

14. 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.***⁴ 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 Court has narrated down as to when the extraordinary power of this Court under Section 482 of the Code of Criminal Procedure may be

⁴ AIR 1992 SUPREME COURT 604 : 1992 Supp. (1) Supreme Court Cases 335

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 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.”

15. In the light of above discussions made by this Court and in view of observation 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.

16. Accordingly, **CRR No. 2946 of 2022** is **allowed**. Connected applications, if any, are also, thus, disposed of.

17. Consequently, the impugned proceeding, being ACGR No. 3029 of 2022 arising out of Patuli P.S. Case No. 146 dated 13.07.2022 under Sections 498A/506/34 of the Indian Penal Code, 1860 in which Charge Sheet being No. 111/2022 dated 07.08.2022 has been filed against both the petitioners pending before the Learned Addl. Chief Judicial Magistrate, Alipore, 24 Parganas (S) is quashed and all orders passed therein in connection with the said

proceeding are hereby set aside insofar as the present petitioners are concerned.

18. Let a copy of this Judgment be sent to the Learned Trial Court for information.

19. Case Diary, if any, is to be returned to the learned counsel appearing on behalf of the State.

20. Interim order, if any, stands vacated.

21. 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.)