

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 3186 of 2022

Basanti Saha

Versus

The State of West Bengal & Another

For the Petitioner : Mr. Sudipto Maitra, Ld. Sr. Adv.
Mr. Gour Baran Sau, Adv.
Mr. Vijay Verma, Adv.
Mr. Dwaipayan Biswas, Adv.

For the State : Mr. Madhusudan Sur, Ld. APP
Mr. Manoranjan Mahata, Adv.

Heard on : 21.03.2025

Judgment on : 28.03.2025

Ajay Kumar Gupta, J:

1. The petitioner/accused filed an application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') seeking for quashing of the proceedings and the impugned Charge Sheet No. 457/17 dated 26.05.2017 submitted for commission of offence punishable under Sections 417/494/498A/376/406/120B of the Indian Penal Code, 1860 read with Sections 3 and 4 of the Dowry Prohibition Act in connection with G.R. Case No. 213 of 2015 arising out of Raigunj Police Station Case No. 134 of 2015 dated 08.02.2015 pending before the Learned Chief Judicial Magistrate, Raigunj, Uttar Dinajpur.

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

2a. The petitioner along with six others were arraigned as accused persons in connection with Raigunj Police Station Case No. 134 of 2015 dated 08.02.2015 for alleged commission of offence punishable under Sections 417/494/498A/376/406/120B of the Indian Penal Code, 1860 read with Sections 3 and 4 of the Dowry Prohibition Act on the basis of a purported written complaint lodged by Opposite Party No. 2/wife of Late Subrata Saha alias Goutam Saha (since deceased).

2b. According to the written complaint, the opposite party no. 2 alleged, *inter alia*, that the principal accused Subrata Saha while attending a training at Fire Brigade in Raigunj became acquainted with the family of the opposite party no. 2. He falsely claimed to be an unmarried and induced her to marry and by this way, he committed physical relation with the complainant. Ultimately, their marriage was arranged on 24.11.2014. But, after marriage, the accused persons started furious upon her.

2c. The complainant later learned from a family member of the accused that Subrata Saha was already married and had two children. When she asked her husband about such facts then he tried to kill her and threatened her not to open mouth. She returned to her parental house on 31.01.2015 and disclosed the fact to her parents.

2d. On the basis of said written complaint, the aforesaid Raigunj Police Station case was registered and investigation was initiated against the accused persons.

2e. After culmination of investigation, a Charge Sheet No. 457/17 dated 26.05.2017 under Sections 417/494/498A/376/406/120B of the Indian Penal Code, 1860 read

with Sections 3 and 4 of the Dowry Prohibition Act has been submitted against the petitioner and others.

2f. Whereas, the contention of the petitioner herein is that she is unmarried sister of Subrata Saha, a school teacher and has been falsely implicated into this case. She has no involvement in the alleged offence as alleged by the opposite party no. 2. No specific allegations particularly the date, time and manner of commission of offence by the petitioner are disclosed in the written complaint. Even, during investigation, no evidence was collected against the present petitioner. Accordingly, the proceeding is a sheer abuse of process of law. Hence, this Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONER:

3. Mr. Maitra, learned senior counsel appearing along with others counsel on behalf of the petitioner vehemently argued and submitted that although petitioner is the unmarried sister, is a school teacher. The offence punishable under Sections 417/494/376/406/120B of the Indian Penal Code, 1860 read with Sections 3 and 4 of the Dowry Prohibition Act are not at all applicable against the present petitioner. The principal accused, Subrata Saha expired on 21.12.2019 after filing the charge sheet resulting in the closure of his case.

4. Learned senior counsel further submitted that the FIR was lodged on 8th February, 2015 without explaining for the delay, despite the marriage was taken place on 24.11.2014 and she left her matrimonial home on 31st January, 2015 and went to her parental house.

5. It was further submitted that though the allegations made in the written complaint alleging that the petitioner herein had assaulted the opposite party no. 2 during her stay at the matrimonial home, but, no particulars about the date, time and manner of assault alleged by the petitioner is available. She was never involved in the offence as alleged by the opposite party no. 2. Allegations, whatsoever are made against her, are general and omnibus, hence, the proceeding should not be allowed to be continued otherwise it would be a sheer abuse of process of law and for securing the ends of justice, petitioner's case may be quashed otherwise she would suffer irreparable loss and injury due to such illegal and frivolous proceeding.

6. Additionally, it was submitted that the Learned Magistrate took cognizance against the petitioner without going through the materials available in the charge sheet and mechanically. The charge sheet contained only general and vague allegations and was filed

mechanically without proper investigation against the Petitioner as such, only on such ground, proceeding is liable to be dismissed.

7. Learned counsel placed reliance of judgments in support of his arguments as under: -

i. Rashmi Chopra Vs. The State of Uttar Pradesh & Anr. WITH Anita Gandhi Vs. The State of Uttar Pradesh & Anr. WITH Nayan Chopra Through POA Halder Rajesh Chopra Vs. The State of Uttar Pradesh & Anr. WITH Amit Chopra Vs. The State of Uttar Pradesh & Anr. WITH Kuldeep Gandhi Vs. The State of Uttar Pradesh & Anr. WITH Rajesh Chopra Vs. The State of Uttar Pradesh & Anr.¹ Particularly paragraph Nos. 24 and 25 thereof;

ii. Achin Gupta Vs. State of Haryana and Another² particularly paragraphs nos. 18 to 21 thereof;

iii. N.S. Madhanagopal & Anr. Vs. K. Lalitha³ particularly Paragraph no. 13 thereof;

¹ (2019) 4 C.Cr.L.R. (SC) 567;

² 2024 CRI.L.J. 2307: AIROnline 2024 SC 311;

³ 2023(1) AICLR 140 (S.C.);

*iv. Kahkashan Kausar alias Sonam and Ors. Vs. State of Bihar and Ors.*⁴ particularly paragraphs 17 and 18 thereof.

8. In the first judgment, the Hon'ble Supreme Court held in paragraph nos. 24 and 25 as under:-

“24. Coming back to the allegations in the complaint pertaining to Section 498A and Section 3/4 of D.P. Act. A perusal of the complaint indicates that the allegations against the appellants for offence under Section 498A and Section 3/4 of D.P. Act are general and sweeping. No specific incident dates or details of any incident has been mentioned in the complaint. The complaint having been filed after proceeding for divorce was initiated by Nayan Chopra in State of Michigan, where Vanshika participated and divorce was ultimately granted. A few months after filing of the divorce petition, the complaint has been filed in the Court of C.J.M., Gautam Budh Nagar with the allegations as noticed above. The sequence of the events and facts and circumstances of the case leads us to conclude that the complaint under Section 498A and Section 3/4 of D.P. Act have been filed as counter blast to divorce petition proceeding in State of Michigan by Nayan Chopra.

⁴ (2022) 6 SCC 599.

25. There being no specific allegation regarding any one of the applicants except common general allegation against everyone i.e. “they started harassing the daughter of the applicant demanding additional dowry of one crore” and the fact that all relatives of the husband, namely, father, mother, brother, mother’s sister and husband of mother’s sister have been roped in clearly indicate that application under Section 156(3) Cr.P.C. was filed with a view to harass the applicants. Further, prior to filing of the application under Section 156(3) Cr.P.C. there was no complaint at any point of time by the girl or her father making allegation of demand of any dowry by any one of the applicants. When both Nayan Chopra and Vanshika started living separately since November, 2013, had there been any dowry demand or harassment the girl would have given complaint to Police or any other authority. Further, in the divorce proceedings at Michigan, U.S.A., parties have agreed for dividing their properties including gifts given at marriage but no complaint was made in those proceedings regarding harassment by her husband or his family members.....”

9. In the second judgment, the Hon’ble Supreme Court held in paragraph nos. 18 to 21 as under:-

“18. The plain reading of the FIR and the chargesheet papers indicate that the allegations levelled by the First Informant are quite vague, general and sweeping, specifying no instances of criminal conduct. It is also pertinent to note that in the FIR no specific date or time of the alleged offence/offences has been disclosed. Even the police thought fit to drop the proceedings against the other members of the Appellant’s family. Thus, we are of the view that the FIR lodged by the Respondent No. 2 was nothing but a counterblast to the divorce petition & also the domestic violence case.

19. It is also pertinent to note that the Respondent No. 2 lodged the FIR on 09.04.2021, i.e., nearly 2 years after the filing of the divorce petition by the Appellant and 6 months after the filing of the domestic violence case by her mother-in-law. Thus, the First Informant remained silent for nearly 2 years after the divorce petition was filed. With such an unexplained delay in filing the FIR, we find that the same was filed only to harass the Appellant and his family members.

20. It is now well settled that the power under Section 482 of the Cr.P.C. has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Cr.P.C. does not confer any new power on the High Court but only saves the inherent power, which the Court

possessed before the enactment of the Criminal Procedure Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

*21. The investigation of an offence is the field exclusively reserved for the Police Officers, whose powers in that field are unfettered, so long as the power to investigate into the cognizable offence is legitimately exercised in strict compliance with the provisions under Chapter XII of the Cr.P.C.. While exercising powers under Section 482 of the Cr.P.C., the court does not function as a Court of appeal or revision. As noted above, the inherent jurisdiction under the Section, although wide, yet should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. The authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any proceeding if it*

finds that the initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

10. In the third judgment, the Hon’ble Supreme Court held in paragraph no. 13 as under:-

“13. Taking cognizance of an offence under Section 190(1) of the Cr.P.C. and issue of process under Section 204 are judicial functions and require a judicious approach. This is a proposition not only based on sound logic but is also based on fundamental principles of justice, as a person against whom no offence is disclosed cannot be put to any harassment by the issue of process. Issuance of process must be preceded by an application of judicial mind to the material before the court to determine if there is ground for proceedings against the accused. When the allegations made in the complaint are found to be too vague and general without giving any material particulars of the offence alleged against the accused then the order of the

Magistrate issuing process on the basis of the complaint would not be justified as there must be material prima facie, for issuance of process. We have our own doubts whether even the verification of the original complainant on oath was recorded before taking cognizance and issuing process.”

11. In the fourth judgment, the Hon’ble Supreme Court held in paragraph nos. 17 and 18 as under:-

“17. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, it is revealed

that general allegations are levelled against the Appellants. The complainant alleged that ‘all accused harassed her mentally and threatened her of terminating her pregnancy’. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.”

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

SUBMISSION ON BEHALF OF THE STATE:

13. Learned counsel appearing on behalf of the State produced the case diary and further vehemently opposed the prayer of the petitioner. He submitted that during investigation, sufficient

materials were collected against her from the available witnesses. The statement recorded under Section 161 of the CrPC prima facie indicates the involvement of the petitioner in the alleged offence though some of the sections are not applicable against her.

14. It was further submitted that she played a vital role in arranging the marriage of her brother though she was well-known that he had earlier marriage and has two children. By suppressing the fact, they organised the marriage between her brother and the opposite party no. 2. For that, a separate case was filed against the husband. The Investigating Officer found a prima facie case established against the present petitioner. Accordingly, a Charge Sheet being No. 457/17 dated 26.05.2017 under Sections 417/494/498A/376/406/120B of the Indian Penal Code, 1860 read with Sections 3 and 4 of the Dowry Prohibition Act has been submitted against the present petitioner and other accused persons. Therefore, this Criminal Revisional application is liable to be dismissed.

DISCUSSION AND FINDINGS BY THIS COURT:

15. Having heard the arguments and submissions made by the parties as well as coming to the facts of the present case and upon perusal of the written complaint, lodged by the de-facto

complainant/opposite party no. 2 carefully, it is evident that complainant's husband threatens her when she knew about his earlier marriage and his children. She further stated that her husband and other in-laws induced her to marry him and inflicted tortures upon her. However, no specific role attributed against the sister-in-law in the written complaint, who is the petitioner herein. The allegations are, therefore, general, omnibus and vague in the written complaint. After investigation, a charge sheet was submitted against the accused persons being No. 457/17 dated 26.05.2017 under Sections 417/494/498A/376/406/120B of the Indian Penal Code, 1860 read with Sections 3 and 4 of the Dowry Prohibition Act though all offences are not applicable against the Petitioner.

16. Upon perusal of the case diary particularly the statement of the victim and other witnesses recorded under Section 161 of the CrPC, this Court does not find any specific and/or distinct allegations made against the present Petitioner. The written complaint and statement fail to provide details about the date, time and manner of alleged torture or inducement. As a result, it is impossible to ascertain the role of each accused in the commission of the offence. Therefore, the allegations are found general and omnibus and can, at best, be said to have been made only to implicate the petitioner and reason best known to her.

17. Upon careful perusal of the written complaint, it reveals that allegations against the Petitioner are vague. Furthermore, during investigation, it does not establish that sister-in-law of opposite party no. 2 inflicted tortured either physically or mentally or threatened her in any manner. No specific role has been attributed against the present petitioner with regard to cruelty to constitute offence punishable under Section 498A of the I.P.C. No demand whatsoever made by the petitioner, despite the charge sheet has been submitted by the Investigating Officer against the petitioner. 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 even prima facie case is unable to be established against the Petitioner. Hence, this Court is of the opinion that if such proceedings continue against the petitioner, the conviction of petitioner 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 petitioner is concerned.

18. 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.⁵ which has laid down the basic points for consideration pursuant to which a complaint may be entertained in accordance with law before a Court of law. The Hon'ble Court has narrated down as to when the extraordinary power of this Court under Section 482 of the Code of Criminal Procedure, 1973 may be espoused. Relevant portion thereof may beneficially be quoted herein below: -

“102. This Court in the backdrop of interpretation of various relevant provisions of CrPC under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently 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

⁵ AIR 1992 SUPREME COURT 604 : 1992 Supp. (1) Supreme Court Cases 335

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.”

19. In the light of above discussions made by this Court and in view of observations made by the Hon’ble Supreme Court in the above cited judgment, this Court fully satisfies that this case falls in the Categories mentioned in 1, 3 and 5 above.

20. Apart from the aforesaid judgment, the judgments referred on behalf of the petitioner are squarely applicable in the present facts and circumstances of this case.

21. Accordingly, **CRR 3186 of 2022** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.

22. Consequently, the proceedings and the impugned Charge Sheet No. 457/17 dated 26.05.2017 for alleged commission of offence

punishable under Sections 417/494/498A/376/406/120B of the Indian Penal Code, 1860 read with Sections 3 and 4 of the Dowry Prohibition Act in connection with G.R. Case No. 213 of 2015 arising out of Raigunj Police Station Case No. 134 of 2015 dated 08.02.2015 pending before the Learned Chief Judicial Magistrate, Raigunj, Uttar Dinajpur are hereby quashed insofar as the petitioner is concerned.

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

24. Interim order, if any, stands vacated.

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

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

27. 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)