

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3305 of 2022

Vishal Jaiswal

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Anirban Dutta,
Mr. Mahesh Joshi,
Mr. Sandip Joshi,
Mr. Kajal Kr. Dutta.

For the State : Ms. Sreyashi Biswas,
Ms. Puspita Saha.

For the Opposite Party No. 2 : Mr. S.K. Sadhukhan,
Ms. Moumita Barall.

Hearing concluded on : 19.12.2024

Judgment on : 08.01.2025

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for quashing of the proceedings in connection with Ahmerst Street Women P.S. Case No. 01 of 2022 dated 01.02.2022 under Sections 498A/406/34 of the Indian Penal Code and Section 3/4 of the Dory Prohibition Act, corresponding to charge-sheet no. 02/2022 dated 27.06.2022 under Section 498A/406 of the Indian Penal Code, pending before the learned Additional Chief Metropolitan Magistrate-II, Calcutta.
2. **The petitioner's case** is that he is the husband of the opposite party no. 2/de facto complainant.
3. The allegations in the written complaint lodged by the de facto complainant herein appears to be that the parties were married on 21.02.2015 and that the de facto complainant since her marriage was ill-treated in her matrimonial home. During the said period of ill-treatment the de facto complainant got pregnant and subsequently suffered miscarriage and again got pregnant and gave birth to a child. She left for the birth of her child to her paternal home in the year 2016 and it has been alleged that in spite of several requests her husband did not accept her back. **As such she has filed the case in the year 2022 that is six years after she left her matrimonial home.**
4. **Learned counsel appearing for the de facto complainant** has filed some documents to show that all the 'Streedhan' articles of the de facto complainant has not been returned.

5. **Learned counsel for the State** has placed the case dairy wherein it appears that in course of search and seizure certain articles have been seized from the matrimonial home of the de facto complainant and the said articles were returned to the de facto complainant.
6. It appears that admittedly the petitioner filed the case six years after she left her matrimonial home and, as such, the allegations of not having received the 'Streedhan' articles for six years is prima facie not substantiated. The complainant has chosen to file the present application in the year 2022 with the said allegations (after 6 years of leaving her matrimonial home).
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. In the present case, the allegations in the materials on record including the case diary do not prima facie make out a case for the offences alleged against the accused person.
9. **CRR 3305 of 2022 is thus allowed.**
10. The proceedings in connection with Ahmerst Street Women P.S. Case No. 01 of 2022 dated 01.02.2022 under Sections 498A/406/34 of the Indian

Penal Code and Section 3/4 of the Dory Prohibition Act, corresponding to charge-sheet no. 02/2022 dated 27.06.2022 under Section 498A/406 of the Indian Penal Code, pending before the learned Additional Chief Metropolitan Magistrate-II, Calcutta, **is hereby quashed in respect of the petitioner Vishal Jaiswal.**

- 11.** All connected Applications, if any, stand disposed of.
- 12.** Interim order, if any, stands vacated.
- 13.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 14.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)