

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 2976 of 2018

**Harendra Nath Sarkar & Ors.
Vs.
The State of West Bengal & anr.**

For the petitioners : Mr. A.K. Samanta
Mr. Surajit Maity
Mr. Arun Kumar Das

For the opposite party No.2 : Mr. Satadru lahiri
Mr. Safdar Azam
Mr. D.Ray

For the State : Mr. Bidyut Kumar Roy
Ms. Faria Hossain

Heard on : 06.08.2025

Judgment on : 25.11.2025

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioners are the brothers in law and sister in law of the defacto complainant/opposite party no.2, who prayed for quashing of proceeding being GR case no. 2204 of 2017 arising out of Bagda Police Station case

no.409/2017 under section 498A/34 of the Indian Penal Code presently pending before learned ACJM, Bongaon, North 24 Parganas.

2. The Opposite party no.2/victim filed a petition of complaint before the court below under section 156(3) of the Cr.P.C. against the petitioners and after receiving the said complaint learned Court below directed the police to start investigation and thereafter police submitted charge sheet against six accused persons under section 498A/34 of IPC and during pendency of the proceeding father in law and one brother in law died and accordingly the name of the petitioner no.1 & 3 were expunged from the cause title of the instant application.

3. The allegation levelled in the petition of complaint which was subsequently treated as FIR *interalia* states that the marriage of the complainant was solemnised with one Nilratan Sarkar about 19 years back and due to said wedlock two male children were born. While the husband is stated to have treated the complainant with care and affection during his lifetime but it is alleged that the other family members/petitioners subjected her to physical and mental cruelty. The petitioners went to the extent of instigating her to commit suicide. On 26.04.2017 while her husband was engaged in cultivation work in the field, the accused persons assaulted and drove her from the matrimonial house along with her minor younger child and thereafter the accused persons/petitioners forced her husband to start a case against her and as a result, her husband lodged a case being Bagda Police Station case no. 313/2017 under section 365/366/498A/34 of the Indian Penal Code. The complainant also stated in her complaint that on 05.05.2017, her husband proposed her that they would reside separately.

The complainant came back to her matrimonial home and stated everything to the accused persons but the accused persons/petitioners abated her husband to commit suicide and as a result her husband committed suicide on 06.05.2017

4. Being aggrieved by the aforesaid proceeding Mr. Samanta learned counsel appearing on behalf of the petitioners submits that the complainant left her matrimonial house with the child without informing her husband and for which her husband lodged aforesaid complaint before the police station being Bagda police case no. 313/2017 Under section 365/366/498/34 IPC. However, police submitted final report in the said case stating '*mistake of fact*'. Thereafter the husband of the defacto complainant committed suicide on 06.05.2017 and one of the brother of the deceased after knowing the contents of the suicide note lodged complaint against the present complainant and six others being Bagda Police station case no. 333/2017 dated 07.05.2017 under section 306 IPC. The instant complaint is the counterblast of the said complaint lodged on behalf of the petitioners. Learned counsel for the petitioner further argued that during 18/19 years of marriage , the complainant/wife never made any allegation against the present petitioner who infact resided separately. Accordingly it is clear that the complainant lodged the complaint to save herself from the said proceeding and to harass the petitioners.

5. Learned counsel for the petitioner further submitted that the present defacto complainant again filed a petition of complaint before the court below which has been registered as Bagda P.S. case no. 874 of 2017 dated 29.11.2017 under sections 341/323/447/354/406/34 of IPC, where police

prayed for discharge of some accused persons but the court below directed to re investigate the same.

6. It is further submitted on behalf of the petitioners that petitioner no.3 being the business man, most of the time reside outside the house and the petitioner no.5 being the wife of the brother in law of complainant resides in a separate mess. Petitioner no.6 being the married sister in law has been residing in her matrimonial house and she has got no connection with her father's house. Therefore, the petitioners have no scope to inflict any kind of torture upon the defacto complainant as alleged. But police without making proper investigation has submitted charge sheet under section 498A/34 IPC against the present petitioners.

7. Mr. Samanta on behalf of the petitioners further argued that the opposite party no.2/complainant lodged the complaint on 29.05.2017 without explaining the delay. In fact opposite party no.2/complainant left her matrimonial house with another one on 26.04.2017, which also reveals from the complaint lodged by her husband. The opposite party no.2 herein never gave any reply to such allegation. The suicidal note of her husband also speaks something different with that of the averments made in the complaint. No specific role has also been attributed against the petitioners in commission of the offence and considering all these, proceeding is liable to be quashed. The petitioners in support of their prayer for quashment has relied upon the following judgments

(i) *Abhisek Vs State of M.P.*, reported in (2023) 16 SCC 666

**(ii) *Kahkashan Kausar @ Sonam Vs. State of Bihar and others*,
reported in (2022) 6 SCC 599**

- (iii) ***Preeti Gupta & anr. Vs. State of Jharkhand and Anr.***, reported in **(2010) 7 SCC 667**
- (iv) ***Rajesh Sharma and Ors., Vs. State of U.P. and Anr.*** reported in **(2018) 10 SCC 472**
- (v) ***Dara Lakshmi Narayan and Ors. Vs. State of Telangana and another***, reported in **AIR Online 2024 SC 827**
- (vi) ***Kartik Chandra Majee @ Kartick Chandra Majee and others, Vs. State of Jharkhand and another***, reported in **(2019) 1 SCC (cri) 415**
- (vii) ***Arif Ali Vs. State of West Bengal and another***, reported in **2020 (1) C. Cr. LR (Cal) 200**
- (viii) ***Neelu Chopra & anr. Vs. Bharti*** reported in **(2009) 10 SCC 184**

8. Mr. Satadru Lahiri learned counsel appearing on behalf of the opposite party no.2 argued that the allegations in the FIR are sufficient to attract section 498A of IPC which states that the accused persons have been residing at same mess with the complainant and the accused persons subjected the complainant to mental and physical torture and had assaulted her with fist and blows and had instigate her to commit suicide by consuming poison or by hanging. Their appears to be no documentary evidence of unimpeachable character demonstrating that the accused persons had been residing at a different place or resident of far of places which render their presence at the place impossible. It has also been alleged in the complaint that on 26th April, 2017, all the accused persons had forcibly driven her after assaulting her.

9. Therefore, the contents of the FIR as well as the charge sheet and the materials collected during investigation is sufficient to attract first limb of section 498A of IPC. In this context he further argued that the law only requires that the basic elements of the offence be disclosed and it is neither practical nor expected that the victim would record the exact time place or action of each incident and therefore it cannot be said that the allegations levelled in the FIR are either vague or omnibus. The charge sheet also clearly reflects the name of the accused persons who participated in the offence and it has also been stated that all the accused persons participated and were present at the place where offence was committed. The petitioners during investigation also did not bring any material to show that any one of them were staying far of places at the relevant period so that it can be said that their presence in the place of occurrence is impossible.

10. Mr. Lahiri further argued that the documents which are annexed with the supplementary affidavit are private documents and such untested documents cannot be looked into at this stage and further more the documents relate to subsequent happenings and as such irrelevant for the present proceeding. Moreover petitioner no.2 claim to have employed at Haldia Hospital and both the petitioner no.2 and 5 are staying their but the documents indicate that they are permanent resident of the place in close vicinity of alleged place of occurrence. He further argued that narration of specific role against the petitioners at subsequent stage will not be fatal or cannot be said as exaggeration. The FIR is only an initial version of events and is not expected to detail with the specific role of each accused persons.

11. Moreover the petitioners are charged with sharing common intention as defined under section 34 of IPC, which is even sufficient for prosecuting the petitioners. It is to be noted that the prosecution story from inception are consistent about presence of all the petitioners at the place of offence. Materials collected during investigation demonstrate the factual basis for attracting liability under section 34 IPC which is not a substantive offence in itself.

12. Mr. Lahiri further argued that trial court has independent and substantive power to consider the materials on record judicially and to form an independent opinion as to prima facie penal liability of the petitioners under IPC. Learned Magistrate is no way bound by the opinion formed by the investigating agency nor the mistakes committed by investigating officer has any bearing on unfettered power and discretion available to the Court below while considering charge. The charge sheet is only recommendatory in nature and it represents the official view, which is not a final determination. The learned court has to apply his judicial mind independently and he can add, delete modify charges if supported by evidence. Therefore the non inclusion of other sections by the police does not restrict the courts power to consider, it if the facts justified it.

13. He further contended that it is well settled that at the pre trial stage or at the stage of framing charges High Court is only concerned with the existence of prima facie case but going into a deep factual analysis is not permitted at this stage.

14. While giving answer to the petitioners allegation of delayed FIR, the counsel for the petitioners submits that in cases of matrimonial harassment

or cruelty, delay in lodging FIR is quite common and does not weaken the case. The victim often suffers silently for a long period before finally deciding to approach authorities for various reasons. Moreover the offence under section 498A is considered as a continuing offence and for which clock does not start ticking from the first act of cruelty but continues as long as the harassment persists. Most importantly the petitioner could not demonstrate in any unfathomable malice on the part of the complainant that indicates that impugned proceeding was initiated pursuant to such malice at belated stage. Therefore, the delay in reporting in offence cannot be a ground to reject the complaint, when the facts indicates acts of mental and physical torture by the petitioners.

15. Moreover, the petitioner's case that they were falsely implicated and could not have been involved in the offence are matters of defence, which needs to be tested with evidence, cross examination and details inquiry during the trial. Furthermore quashing of proceeding on the ground of *malafide* is one of the rarest circumstances and is only permissible when malice so explicit from the record that further continuance of proceeding would be mere abuse of process of court. The prosecution pending against the complainant/opposite party is on a different cause of action and has no relevance with the present one. Merely one of the petitioners is defacto complainant in the said proceeding alone cannot be a ground for declaring the impugned proceeding tainted. At the preliminary stage of taking cognizance or framing of charge there is no scope to conclusively determine the truth or falsity of such claims. In view of the aforesaid facts and

circumstances, the complainant / opposite party prays for dismissal of the instant application.

16. At the outset at the cost of repetition let me put forth the narration in the written complaint by opposite party no.2 herein on 26.04.2017 under section 156(3) Code of Cr.P.C. implicating father- in-law, brothers- in-law namely petitioner no. 2 and 4 and sister-in-law namely petitioner no. 5 and 6 herein that her marriage was solemnized with one Nilratan Sarkar since deceased about 19 years back and they are also blessed with two male children. It is alleged that all the aforesaid in laws tortured her physically and mentally and they also instigated her to commit suicide. On 26.04.2017 while her husband was in the agricultural field, all the accused persons assaulted her and had driven her from her matrimonial home with her younger minor son and thereafter all the accused persons forced her husband to start a case against her and as a result Bagda police station case no. 313/2017 dated 29.04.2017 under section 365/366/498/34 of the IPC was started. Thereafter her husband proposed her on 05.05.2017 that henceforth they would reside separately. The complainant came back to the matrimonial home and stated everything to the accused persons but the accused persons abated her husband to commit suicide and as a result her husband committed suicide on 06.05.2017 by consuming poison.

17. During investigation police have recorded the statement of three witnesses who have echoed in the same voice that all the accused persons used to inflict physical and mental torture upon the defacto complainant and at last on 26.04.2017 all her in laws/petitioners assaulted her and had driven her from the matrimonial house along with the younger son. Nothing

further incriminating material collected during investigation against the present petitioners. In the charge sheet relevant portion of the police report runs as follows:-

“during investigation of the case I visited PO drew PO map along with index, examined witnesses & recorded their statements u/S 161 Cr.P.C. I collected the Xerox copy of the FIR which was lodged regarding the missing of the complainant Subhra Sarkar vide Bagdah PS Case No. 313/17, dt:29.04.17, u/s365/366/498/34 IPC © of the FIR which was lodged against the complainant Subhra Sarkar and others after death of her husband vide Bagdah PS Case No. 333,dt:07.05.17 u/s 306/34 IPC. I collected the Xerox copy of some documents relating to the death of Nilratan Sarkar, the husband of the complainant and I also collected the Xerox copy of the P.M. report of Nilratan Sarkar. Further I received one surrender slip from the R&D Section of Bagda PS. And perused the S/L I found that the FIR named Accd. Persons namely 1) Harendra nath Sarker, s/o lt. Shitidhar Sarkar, 2) Paritosh Sarker, S/o Harendra nath Sarker,30 Ashuthosh Sarkar, S/o Harendra nath Sarker, 4) Pabitra Sarkar, S/o Harendra Nath Sarker ,5) Lipu Sarker, W/o Pabitra Sarkar, 6) Dipti Sarker@ Biswas W/o Asit Sarkar @ Biswas All of Chowatia PS-Bagda, 24(PGS(N) surrender before the Ld. Court on 18.09.17 and released on bail.

During investigation a prima facie charge u/s 498A/34 IPC has been well established against all FIR named accd. Persons noted in col.no.12.”

18. On a bare perusal of the FIR and the materials collected during investigation, it appears that the allegations made by opposite party no.2 against her in laws/petitioners are vague and omnibus. Other than claiming that all the petitioners inflicted physical and mental torture upon her and that the accused persons instigated her to commit suicide, opposite party no.2 has not provided any specific details or described any specific role to be attributable to each of the petitioners. She has also not mentioned the manner in which she was allegedly physically and mentally tortured. Therefore, FIR itself lacks concrete precise allegation. Even during investigation no specific evidence could be collected by the investigating agency which may constitute ‘cruelty’. Furthermore it is the case of opposite party no. 2 that she was driven by the petitioners/in-laws from her matrimonial home after assaulting her physically but from unimpeachable

document being FIR of Bagda Police Station Case. no. 313 of 2017 dated 29.04.2017 under section 365/366/491/34 IPC lodged against the present opposite party no.2 and three others, it appears that her deceased husband alleged that the opposite party no.2 left her matrimonial house with the child without informing her husband. There was completely different story in the said FIR. It is true that after completion of investigation police submitted final report in the form of FRT in the said case but fact remains that, the husband of the defacto complainant committed suicide 10 days after leaving matrimonial home by defacto complainant and deceased also allegedly left behind a suicide note implicating the defacto complainant and others and for which the brother of the deceased after discovering the suicide note lodged Bagda P.S. case no. 333 of 2017 dated 07.05.2017 under section 306 of the IPC against the opposite party no.2 herein and six others.

19. Mr. Lahiri though argued that in the FIR complainant has specifically stated that the petitioners instigated her to commit suicide and therefore it attracts the definition of “cruelty” under section 498A IPC, however I find that the said allegation made by the opposite party no.2 in the FIR has not been substantiated during investigation and therefore, appears to be motivated by a desire for retribution rather than a legitimate grievance.

20. Furthermore, allegations attributed against the petitioners herein are vague and omnibus. A mere reference to the names of the family members in a criminal case arising out of matrimonial dispute without specific allegations indicating their active involvement should be nipped in the bud. Upon perusal of the contents of the FIR and also the statements recorded

during investigation, it appears that the allegation is that *'all accused persons tortured her mentally and physically and all accused persons instigated her to commit suicide and all the accused persons had driven her from her matrimonial home after assaulting her physically'*. No specific and distinct allegation have been made against either of the petitioners nor any of the petitioner have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation where one fails to ascertain the role played by each accused in furtherance of commission of the alleged offence. Therefore, the allegations are omnibus and general and can at best be said to have been made out on account of matrimonial discord. Supreme Court has time and again cautioned against prosecuting the family members of the husband in the absence of a clear prima facie case against them. The vague and generalized allegations during matrimonial discord has many a times given birth the misuse of legal process and an encouragement for the use of arm twisting tactics by the wife.

21. Needless to reiterate that in the instant case charge sheet has been submitted against the present petitioners only under section 498A/34 of the IPC. Now whether or not from the FIR filed and the charge sheet submitted, a case under section 498A/34 IPC is made out or not is also to be judged in the touchstone of essential ingredients to constitute the offence. Section 498A of the IPC reads as follows:-

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.

22. In view of aforesaid provision of law it is clear that said section contains an Explanation, which defines ‘cruelty’ as understood under section 498A IPC. In order to attract the expression ‘cruelty’ as envisaged under section 498A, there must be such a conduct on the part of the husband or relatives of the husband of women, which is of a such a nature as to cause the women to commit suicide or to cause grave injury or danger to life limb or health, whether mental or physical of the women.

23. Now if I examine the facts and circumstances of the present case particularly the contents of the FIR and the materials collected during investigation, I find that there is no such allegation either in the FIR or in the charge sheet making out prima facie case as narrated under explanation (a) There is no allegation that there is any such conduct on the part of the petitioners, which could be said to be amounting to cruelty of such a nature as is likely the opposite party no.2 to commit suicide or to cause any injury to her life beside a bald allegation that petitioners instigated her to commit suicide. Therefore, the ingredient to constitute an offence under explanation (a) of section 498A IPC are not at all found, nor has been made out and therefore it does not attract in the present case.

24. So far as explanation (b) of section 498A of IPC constituting ‘cruelty’ of the nature as mentioned in explanation (b), there has to be harassment of the women with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or a case is to be made out to the effect that there is a failure by her or any persons related to her to meet such demand. When the allegation made in the FIR and the materials in charge sheet is examined in the present case, I find no prima facie case even under the aforesaid provision to attract a case of ‘cruelty’.

25. Furthermore in ***Girdhar Shankar Tawade Vs. State of Maharashtra*** reported in **AIR 2002 SC 2078**, it was held that cruelty has to be understood having a specific meaning provided in section 498A IPC and there should be a case of continuous state of affairs of torture by one to the other (para21). It was also held that it is to be established under section 498A that the woman has been subjected to cruelty continuously, persistently or at least in close proximity of time of lodging the complaint. Petty quarrel cannot be termed as ‘cruelty’ to attract the provisions of section 498A IPC.

26. In ***Kahkashan Kausar @ Sonam and others Vs. State of Bihar and others.*** reported in **(2022) 6 SCC 599** the Apex Court held in para 17 is as follows:-

17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC 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.

27. In the instant case, I am constrained to find out that there are material discrepancy in narration of the facts in the three above-mentioned FIRs, two against the complainant and one by the complainant, which is a fundamental flaw so far as the case having been made out against the petitioners. A contradiction disqualifies credence of the allegations made. Though mental cruelty may constitute a formidable part as an ingredient in an offence under section 498A of the IPC but the physical cruelty and torture has also the same gravity. Here allegations of physical torture is also available in the FIR but it lacks support with the relevant documentary testimony in the form of treatment papers. The complainant during her long matrimonial life of 19 years, never lodged any complaint anywhere nor has been treated medically at any point of time for such alleged physical torture. The First Information Report fails to supply any details as regards the injury suffered due to alleged physical torture by the victim. Therefore, as regards making out a case against the petitioners, the materials left for consideration of the court are only a bunch of some non specific omnibus and general nature of allegations that she was tortured physically and mentally by the petitioners, who had ultimately driven her from her matrimonial home and left alone to lead life with her minor son. The same apparently may espouse some amount of sentiments but they are not sufficient to set a criminal process in motion against the petitioners under section 498A IPC, whose specific case is that they all along used to reside separately at separate places. Therefore, the FIR and other materials available in the record against the petitioners do not disclose a cognizable offence to have been made out against the petitioners. The FIR narrated

incident appears to be largely concocted and absurd in presence of glaring discrepancy as reflected in the different FIRs and also in absence of sufficient corroborating and supporting materials. Since the proceeding is the outcome of the matrimonial disharmony between the parties, therefore, existence of any malicious or *malafide* intention in setting the criminal justice system in motion against the petitioners cannot be ruled out.

28. Though Mr. Lahiri on behalf of the opposite party argued that the documents relied by the petitioners as annexure of their petition cannot be relied at the time of consideration of the proceeding under section 482 of the Code of Criminal Procedure but it is now well settled in view of the judgment of ***Hazi Iqbal @ bala through SPOA Vs. State of U.P. and Ors.*** reported in **2023 INSC 688** that it will be not just enough for the Court to look into the averments made in the FIR/complain alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. But the courts owes a duty to look into many other attending circumstances emerging from the record of the case, over and above the averments, and if need be, with due care and circumspection court should try to read in between the lines. The relevant Para 15 of the judgment reads as follows:-

“15. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the

necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

29. Therefore, in view of the legal position as stated above and considering contents of the FIR and the documents accompanying the final report under section 173 of the Code which includes the statements recorded by the investigating agency under section 161 of the Code, does not disclose the commission of the offence alleged against the petitioners. Even if the allegations and the case of the prosecution is taken at its face value, apart from the bald allegation without any specification, there appears to be no incriminating material found by the prosecution or produced by the complainant to substantiate the ingredients of ‘cruelty’ under section 498A IPC.

30. In view of above the impugned proceeding being GR case no., 2204 of 2017 arising out of Bagda P.S. case no. 409 of 2017 under section 498A/34 IPC presently pending before learned ACJM, Bongaon, is hereby quashed.

31. CRR 2976 of 2018 thus stands allowed.

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.)