

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

**CRR 3747 of 2022
With
CRAN 1 of 2025**

**Sumanlal Kodialbail & Ors
Vs.
The State of West Bengal & Anr.**

For the Petitioner : Mr. Ayan Bhattacharya, Sr. Adv
Ms. Aditya Ratan Tiwary
Mr. Suman Majumder
Ms. Santanu Thakur

For the State : Mr. Debasisi Roy, Ld. PP
Mr. Imran Ali
Ms. Puspita Saha

For the Opposite Party No.2 : Mr. Subrata Bhattacharya
Mr. Indanuj Dutta

Heard on : 06.08.2025

Judgement on : 20.08.2025

Dr. Ajoy Kumar Mukherjee, J.

1. The instant application under section 482 of the Code of Criminal Procedure has been preferred assailing the proceeding being Burdwan Women Police Station Case No. 403, dated August 21st, 2022 under section

498A/406 of the Indian Penal Code (IPC) pending before CJM, Purba Burdwan.

2. On August 21, 2022 the opposite party no. 2 herein lodged an FIR against the petitioners herein *inter alia* on the allegations that since after the marriage of opposite party no. 2 with the petitioner no. 1 herein, the opposite party no. 2 has been subjected to mental and physical torture by the petitioners herein. Due to such continuous torture and oppression opposite party no.2 had to leave her matrimonial home and thereafter she took shelter at Burdwan. It has been further alleged that all the stridhan belongings of the opposite party no. 2 are forcefully kept at the matrimonial house of the opposite party no.2. It is also alleged that the petitioner no. 1 being the husband of defacto complainant/opposite party no.2, had also cheated the father of the opposite party no.2, for which he had to face huge monetary loss. It has also been alleged that on 7th July, 2022 the petitioner no. 1 herein reached Burdwan and called the opposite party no.2, when she was on medical call. The opposite party no.2 after getting such call from petitioner no.1/her husband, rushed to her rented house. It is further alleged that suddenly petitioner no. 1 slapped the complainant/opposite party no.2 herein and started kicking her on her leg thereby thrashed her on ground and tempted to throttle the opposite party no.2 with intention to kill her. The victim/opposite party no.2 raised alarm and when the neighbours reached the spot, the petitioner no. 1 left the place.

3. Being aggrieved by the aforesaid impugned proceeding, Mr. Ayan Bhattacharya learned counsel appearing on behalf of the petitioners submits that the *de facto* complainant has an extra marital affair and after coming to

know about such illicit relation the petitioner no.1/husband raised objection, when the opposite party no.2 became violent and threatened the petitioner no.1 with dire consequences. The Opposite party no. 2 herein is residing at present with the person with whom she has extra marital affair at Burdwan. He further submits that the petitioner no. 1 got married to the opposite party no. 2 on 26.05.1997 and from the said wed lock two children were born who are residing with the petitioner no. 1. On 14.05.2019 said opposite party no.2/complainant eloped with her paramour with money and jewelleries as would be evident from the complaint so lodged by the self-same opposite party no. 2 with the superintendent of Police sector 6, Gandhi Nagar, Gujarat on May, 17, 2019. Subsequently she also lodged another FIR on January 16, 2021 against the opposite party no. 1 herein under sections 420/406/467/468/471 of the IPC but in the said FIR there is no whisper of mental torture during the entire period. The petitioner no.1/ accused further contended that he is a resident of Gandhinagar, Gujarat where he resides with his old ailing mother being the petitioner no. 2 herein and with his two children whom the opposite party no. 2 herein has abandoned.

4. Mr. Bhattacharya accordingly submits that it is evident that the present proceeding is a malicious attempt on behalf of the opposite party no.2 to implicate the petitioners in any manner in order to expose them to the chilling effect of threat, arrest and prosecution. He further submits that the allegations under section 406 of IPC is suffering from antagonistic contradiction which is evident from the fact that in the complaint lodged by the opposite party no.2 herein with the police station at Gandhi Nagar Gujarat, the opposite party no. 2 had admitted that she had taken all her

belongings and cash and that she had left her matrimonial house at her own free will and under no pressure or influence from anybody. Accordingly when she admittedly had taken all her belongings on 22nd May, 2019, the question of misappropriation of said belongings in 2022 cannot and does not arise.

5. He further submits that the instant proceeding is also barred by limitation as the offence under section 498A or 406 of IPC is punishable with imprisonment for a period of three years and under section 468 of Cr.P.C., the court is not supposed to take cognizance of an offence after three years. He further submits that in the present case the opposite party no. 2/ complainant eloped with her paramour on 14.05.2019, for which a missing diary was lodged by petitioner no.1 on May 17, 2019, whereas the present FIR was initiated on August 21, 2022 which is beyond three years. He further submits that no preliminary inquiry was conducted in the present case in terms of the direction passed by the Hon'ble Apex Court in **Lalita Kumari Vs. Government of Uttar Pradesh and Ors.** reported in **(2014) 2 SCC 1.**

6. Mr. Bhattacharjee further submits that during investigation opposite party no. 2 did not turn up for examination and no specific allegation with date or time has been mentioned in the complaint, which is sine qua non for framing a charge under section 498A of the Code. Accordingly he prayed for quashing the aforesaid impugned criminal proceeding.

7. Learned counsel appearing on behalf of the opposite party no.2 opposed the prayer for quashment. He contended that at this stage of considering a petition for quashing criminal proceeding, the allegations in

the FIR must be accepted as they stand and the court cannot embark upon the appreciation of evidence. In this context he placed reliance upon Judgement of a coordinate Bench of this Court reported in 2022 0 Supreme (Cal) 529.

8. Mr. Imran Ali learned Counsel appearing on behalf of the State placed the case diary and submitted that there are sufficient materials against the present petitioners in the case diary which includes the statements recorded under section 161 of the Code of Criminal Procedure and the investigation has already been culminated into a charge sheet and as such it would not be proper to throw away the instant proceeding without giving an opportunity to the prosecution to prove their case.

9. I have considered submissions made on behalf of both the parties.

10. During the course of argument learned counsel for opposite party no.2 denied the contention of the petitioners herein but fact remains that on May 22, 2019 the self same defacto complainant lodged a complaint against the petitioner no. 1 before Superintendent of Police sector 6, Gandhi Nagar, Gujarat with evasive and unspecified allegation of mental and physical torture by her husband but she has admitted therein that she has taken all her belongings and cash which she has earned through medical profession and she left her matrimonial house at her free will and under no pressure or under any influence from anybody.

11. It is also not disputed that the petitioner no.1 herein lodged a missing diary in Santej Police Station, Gandhinagar, Gujarat on 17.05.2019 and against the missing report the opposite party/ complainant gave statement to the investigating officer of the said case where she admitted that she has

been staying under the shelter of another person at the address mentioned in the FIR i.e. at Budwan. It further appears from the complaint lodged by the self same defacto complainant on 16.01.2021, that there is no allegation of physical or mental torture in the said complaint.

12. The solitary incident which has been emphasised to attract Section 498A of IPC during the hearing, by learned counsel appearing on behalf of the State and the opposite party no. 2, is in connection with above-mentioned occurrence which allegedly took place on July 10, 2022 when petitioner no.1/husband/accused reached Burdwan and called her at her residence and then allegedly slapped her and started kicking her on her leg and tried to throttle her with the intention to kill her.

13. It appears that during investigation the alleged case of attempt to throttling the complainant by the petitioner no.1 did not find support. Upon perusal of the materials including the complaint, it is evident that there was no narration of fact particularly with regard to section 498A IPC. It is trite law that “cruelty” under Section 498A has to be understood having a statutory meaning provided in the said section. Therefore the question posed herein for consideration is whether the solitary incident of slapping or kicking without having statutory meaning, that allegedly took place on July 10, 2022, attracts Section 498A of IPC or not.

14. In **Girdhar Shankar Tawade Vs. State of Maharashtra** reported in **AIR 2002 SC 2078**, it has been clearly held that ‘cruelty’ has to be understood having a specific statutory meaning provided in section 498A IPC and there should be a case of continuous state of affairs of torture by one to other. Therefore, it has to be established that the victim/complainant

has been subjected to cruelty continuously/persistently or at least close proximity of time of lodging the complaint. Petty quarrels and physical assault, if any, which allegedly took place on July 10th , 2022 cannot be termed as “cruelty” to attract the explanation given in section 498A IPC nor can be called as causing mental torture to the extent that it became unbearable to attract the term “cruelty”. In this context reliance has been placed upon **Manju Ram Kalita Vs. State of Assam** reported in **AIR 2009 SC (SUPP) 2056**.

15. In the present case from narration of fact it would be evident that the petitioner no.1 got married to the opposite party no.2 way back in 1997 and two children were born who are now adult and there is no denial on the part of the opposite party no.2 that she had left her matrimonial home voluntarily along with money and jewellery as admitted in her earlier complaint dated May 17, 2019. Moreover the second FIR which was lodged on 16th January, 2021 against the petitioner no.1/husband under sections 420/406/467/468/471 of the IPC i.e. one and half year before instant FIR, no charge under section 498A IPC was levelled.

16. I have also gone through the statements of the witnesses recorded during investigation. Beside evasive allegation, the statement of witnesses refers to incident that allegedly took place on July, 10 2022, when the petitioner no. 1 herein allegedly slapped opposite party no.2 and kicked and harassed her and had created ruckus. From the statement of witnesses, it only appears that the incident of ruckus and assault by fist and blow by Petitioner No.1/husband had taken place on that particular day and in view of the aforesaid settled proposition of law, such a solitary incident of ruckus

as alleged and/or assault by fist and blow does not satisfy the essential ingredients of section 498 A of the IPC.

17. Herein the provisions under section 498A of the IPC has been invoked clearly by a disgruntled wife against her husband and her-in-laws. In ***Kahkashan Kausar @ Sonam & Ors Vs. State of Bihar & Ors.*** reported in **(2022) 1 SCR 558** the Apex Court held that incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a women by her husband and her in laws. However in recent times matrimonial litigation in the country has also been increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, which has resulted in an increased tendency to employ provisions such as section 498A IPC as instruments to settle personal scores against the husband and his relatives. It was further held 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, the Supreme Court has warned the courts from the proceeding against the relative and in laws of the husband when no prima facie case is made out against them.

18. Herein also upon perusal of the contents of the FIR it reveals that in the complaint general allegations have been levelled against the husband and the in laws and no specific or distinct allegation have been made against them. The specific isolated allegation made in the FIR against the husband which allegedly took place on 10.07.2022 apparently does not constitute any cognizable offence, far from offence under section 498A IPC. Moreover, in the present case, the FIR was lodged after 25 years of marriage,

on the basis of a solitary incident and in the FIR there is no whisper about initiation of the earlier proceedings by the opposite party and the FIR also does not contain explanation for delay in lodging the FIR against the petitioners. Even the solitary incident was allegedly took place on July, 10th, 2022 but the FIR was initiated on August 21, 2022, without having any explanation.

19. Needless to reiterate that the term ‘cruelty’ has been defined in section 498A itself and it states that in order to attract section 498A first of all there would be any wilful conduct which is likely to drive the women to commit suicide or to cause grave injury or danger to life limb and health. Secondly harassment of women where such harassment is with a view to coercing her or any interested person related to her to meet any unlawful demand including demand of dowry or on account of failure to meet such demand.

20. In the facts and circumstances of the instant case the FIR and the charge sheet are conspicuously silent about any kind of torture or any unlawful demand against petitioners beside omnibus statements. In fact mere harassment and/or infliction by fist and blow and/or creating ruckus and/or assault would not ipso fact constitute cruelty unless the intensity of such torture and/or fist and/or blow and/or ruckus, so intended as to drive the women to commit suicide or to cause grave injury or danger to her life. The allegations levelled against the in-law who are petitioners No. 2 to 6 herein, even if taken at its face value are bald allegations without any specific date, time on place and no incriminating material found by the prosecution during investigation against the said in-laws/petitioners to substantiate the ingredients of “cruelty” under Section 498A of IPC.

21. The contents of FIR and materials collected during investigation contains certain statements indicating that at least on one occasion petitioner No.1/husband had assaulted opposite party No.2/complainant but as stated above, mere physical assault in absence of any unlawful demand, does not constitute offence under Section 498A IPC. There is also no material to suggest that there had been any wilful conduct on the part of husband or any in law of such a nature as was likely to drive the complainant to commit suicide or to cause grave injury as danger to life, limb or health, whether mental or physical. Mere inability to adjust or absence of sweet relationship, compelling wife to live separately at others family does not amount to even “mental cruelty” as defined under the section.

22. Moreover in **Girdhar Shankar Tawade vs. State of Maharashtra, (2002) 5 SCC 177: AIR 2002 SC 2078**, court made it, clear that there shall have to be series of acts in order to be a “harassment” within the meaning of explanation (b) of section 498A IPC. Relevant paragraph may be quoted below:-

“18. A faint attempt has been made during the course of submissions that Explanation (a) to the section stands attracted and as such, no fault can be attributed to the judgment. This, in our view, is a wholly fallacious approach to the matter by reason of the specific finding of the trial court and the High Court concurred therewith that the death unfortunately was an accidental death and not suicide. If suicide is left out, then in that event question of applicability of Explanation (a) would not arise — neither the second limb to cause injury and danger to life or limb or health would be attracted. In any event the wilful act or conduct ought to be the proximate cause in order to bring home the charge under Section 498-A and not de hors the same. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under Section 498-A. The legislative intent is clear enough to indicate in particular reference to Explanation (b) that there shall have to be a series of acts in order to be a harassment within the meaning of Explanation (b). The letters by themselves though may depict a reprehensible conduct, would not, however, bring home the charge of Section 498-A against the

accused. Acquittal of a charge under Section 306, as noticed hereinbefore, though not by itself a ground for acquittal under Section 498-A, but some cogent evidence is required to bring home the charge of Section 498-A as well, without which the charge cannot be said to be maintained. Presently, we have no such evidence available on record.”

23. Now as regards the allegation levelled under section 406 of IPC, I have already mentioned above that the defacto complainant has made clear statement when she lodged the FIR at Gandhinagar, Gujarat on May, 17, 2019 that she had left her matrimonial house voluntarily and she had taken all her belongings and cash which may be reproduced below:-

“I have taken by belongings and cash which I have earned through my medical profession. I have not taken any cash or jewellery that belonged to my husband or my parents”

24. In view of aforesaid statement it appears that there is no demand of return of Stridhan articles whatsoever in the first FIR so lodged on January, 16, 2021 and therefore the allegation under section 406 IPC is clearly an afterthought and is not sustainable in law, and also not sustainable in view of fact that it is barred by limitation.

25. It is settled proposition of law that where in the opinion of the court, chances of an ultimate conviction are blisk and therefore no useful purpose is likely to be served by allowing criminal prosecution to continue, the court of law while taking into consideration the special facts of a case, can also quash the proceeding. Therefore, when it is apparent that the allegations made in the FIR as well as the materials collected during investigation even if are taken at their face value and accepted in their entirety, do not prima facie constitute any cognizable offence or make out the case as alleged against the accused person/petitioners and when the criminal proceeding

appears to be manifestly attended with *malafide* with an ulterior motive for wreaking vengeance on the accused persons and with a view to spite them due to private and personal grudge, which is also apparent from lodging multiple FIR against the petitioner over a period of time, the court must invoke its power for the ends of justice. Therefore, on perusal of FIR, the final report under section 173 of the Code and all other documents accompanying it, I am satisfied that no cognizable case is made out against any of the petitioners and the pendency of the instant proceeding against them before the court below is an abuse of process of court.

26. In such view of the matter **CRR 3747 of 2022** is allowed.

27. The impugned proceeding being Burdwan Women Police Station Case no. 403 dated August 21, 2022 under section 498A/406 of the IPC pending before court of Learned Chief Judicial Magistrate, Purba Burdwan is quashed. Connected application, if any, accordingly disposed of.

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.)