

17.01.2025
S.L No. 2
Ct. No. 30
SM

CRR 4203 of 2023
With
CRAN 1 of 2023
(Assigned)
Shri Abhijit Palit & Ors.
Vs.
The State of West Bengal & Anr.

Mr. Sumajit Basu
Mr. Debjyoti Poddar
Mr. Jasika Alam
.....for the petitioners

1. The present revisional application has been preferred praying for quashing of the Case No. AC-272 of 2017 pending in the Court of the learned Judicial Magistrate (1st Class), 2nd Court at Alipore, 24-Paraganas (S) filed by the opposite party no. 2 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the DV Act) against the petitioners.
2. It is the contention of the petitioner that another proceedings under Section 498A/406/34 has been quashed and as such there being no cruelty inflicted upon the opposite party/wife, the proceedings under the Protection of Women from Domestic Violence Act, 2005 is liable to be quashed.
3. **Section 3 of the D.V. Act of 2005, lays down:-**

“3. Definition of domestic violence.—For the purposes of this Act, any act, omission or

commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.—For the purposes of this section,—

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property,

jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—*For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.”*

4. **The said provision includes** physical, sexual, verbal, emotional and economic abuse. Such type of abuse is not considered in a proceedings relating to offences punishable under Section 498A/406/34 IPC.
5. **The nature of abuse under the PWD DV Act, 2005 and cruelty under the Indian Penal Code are different and as such the point for consideration also is different and the same has to be considered on proper evidence being adduced during trial.**

6. In **Ramveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr., Special Leave Petition (CRL.) No. 2953 of 2022, decided on April 20, 2022,** the Supreme Court held:-

*“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under **Section 482** of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under **Section 482** of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. **Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.**”*

7. Accordingly, the prayer for quashing of the proceeding which is under a beneficial legislation and also in view of the observations made above, **the revision stands dismissed.**
8. Learned Trial Court is directed to proceed with the trial in accordance with law expeditiously.
9. Pending applications stand disposed of.
10. Interim order, if any, stands vacated.
11. Let a copy of the order be sent to the learned trial court at once.

- 12.** Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

[Shampa Dutt (Paul), J.]