IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CRIMINAL REVISIONAL JURISDICTION)

Present:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 64 of 2024

Hitesh Sharma & Anr.
Versus
The State of West Bengal & Anr.

For the Petitioners	:	Mr. Anand Bhandari Mr. Urgen Lama Ms. Mayank Bhandari
For the State	:	Mr. Aditi Shankar Chakraborty Dr. Arjun Chowdhury
For the Opposite party No. 2	:	Mr. Sudipto Kumar Mazumder Mr. Subhankar Dutta
Heard on	:	12.03.2025
Judgment on	:	25.03.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. The petitioners herein being the husband and mother in law of the *de facto* complainant/opposite party have filed the instant application challenging the order passed by the judicial Magistrate Darjeeling on 11th December, 2023 in G.R. Case no. 93 of 2016, initiated under sections 498A/494/497/506/109 and section 34 of the Indian Penal Code. By the aforesaid order impugned, learned Court below has rejected the petitioners' prayer for discharge filed under section 239 of the Code of Criminal Procedure.

2. Petitioners' contention is that petitioner no.1 got married with the *de facto* complainant/opposite party no.2 herein on 7th March, 2000 and started their matrimonial life in Mumbai. The petitioner no.1 got an employment in Manila Philippines and shifted to Philippines along with his wife, and they started living in Philippines along with their daughters. It is alleged that few years thereafter complainant returned to her parental home in Darjeeling without the consent of the petitioner no.1 and thereafter in the month of September, 2009 she went to UK to pursue her MBA course, leaving behind their children with her parents in Darjeeling and subsequently returned to Darjeeling in 2015.

3. It is further submitted that the petitioner no.1 and *de facto* complainant staying separately since 2009 and a divorce proceeding is pending between the parties, since 2009 before learned Additional District Judge 3rd Court, Darjeeling. The instant FIR was lodged on March, 5, 2016 by the *de facto* complainant against her husband and both the parents in law, when the petitioner no.1 had returned from Manila, Philippines to Darjeeling to attend a matrimonial proceeding alleging *interalia* that on December, 21 2015, when the petitioner no.1 had gone to Darjeeling to attend court proceedings had also went to the opposite party no. 2's house and had beaten her. However, the opposite party no.2 did not lodge the FIR immediately but waited till the next visit of the petitioner no.1 to Darjeeling and it was lodged only on March 5, 2016 when the petitioner once again came to Darjeeling from Philippines to attend matrimonial proceedings in Darjeeling and the petitioner was arrested on March, 7, 2016 and thereafter he was released on bail.

4. Petitioners' further contention is during the pendency of the aforesaid criminal proceeding the opposite party no.2 on November, 2016 went to Philippines and lodged two complaints against the petitioner no.1, alleging domestic violence and concubinage. Said two complaints were dismissed by the Philippines court.

5. While arguing in support of discharge prayer of the petitioners, it has been contended that the FIR was lodged at a belated stage without disclosing any reason and the charge sheet also failed to disclose any prima facie case against the petitioners, nor police has collected any injury report of the alleged assault caused upon the opposite party no.2 at her parental residence in Darjeeling, when admittedly both the petitioner no.1 and opposite party no.2 are living separately for the last 14 years.

6. It is argued that the only allegation against the mother-in-law/petitioner no.2, who is now aged about 77 years is that she along with her husband in March, 2012 went to her parental residence in Darjeeling and persuaded her to give divorce to the petitioner no.1, so that he can be remarried, whereas the parents of the petitioner no.1 were in London, UK from January, 31^{st} 2012 to July, 4^{th} 2012, which the petitioners have substantiated by the documents annexed to the application. He further contended that the statement recorded under section 161 of the Code including those of the parents of the opposite party no. 2, does not mention about any such assault taking place on the said date i.e. on December 21

2015. The charge sheet does not mention about any such assault taking place in the house of opposite party no. 2 on the said date.

7. They further contended that there is no allegation of demand of dowry in the said complain nor any allegation of withholding anything is embodied and therefore the ingredient of section 498A of IPC is clearly absent either in the complaint or in the charge sheet and all the allegations levelled dates back before 2009 except the alleged incident of December 21 2015, regarding physically assaulting the opposite party no. 2 at her house in Darjeeling, which does not find any mention in the Charge sheet nor any injury or medical report is available and as such the allegation is concocted and has been fabricated merely to get rid of the provision of section 468 of the Cr.P.C, since admittedly the petitioner no. 1 and the opposite party no. 2 are staying separately since 2009 and divorce proceeding is pending also since 2009.

8. It is further alleged that the allegation of adultery/extra marital relationship has also not been established since no documentary evidence of such allegation has been attached to the charge sheet and the allegation of concubinage has also been dismissed in Philippines through a detailed and reasoned order, on a complaint lodged by the opposite party no .2 herein in the said country. The allegation of animosity for not being able to give a male child is also not established beyond bare allegations.

9. Mr. Bhandari learned counsel for the petitioner strenuously argued that the mother in law/petitioner no. 2 is aged about 78 years and suffering from different form of age related ailments and she is residing separately from opposite party no. 2 herein since 2002 till date. Infact the opposite party no. 2 after her marriage in 2000, stayed with her parent in law only between 2000 to 2002 and in 2002 the petitioner no. 1 along with his wife left for Manila, Philippines and the present complaint has been lodged 14 years after such separation. He further argued with force that the only singular allegation against the petitioner no.2 in the complaint is that in March, 2012 she along with her husband went to the complainants house in Darjeeling and pleaded to her to give divorce to their son, so that petitioner no.1 can get married elsewhere. Accordingly it is argued that when the present complaint lodged on March, 5 2016 over the incident which allegedly occurred in March 2012 is expressly barred by limitation. In this context it is further argued that from January, 2012 to July, 2012 both the petitioner no.2 and her husband were in UK and the Air Tickets and the endorsements made on their passport are irrefutable grounds of alibi of the petitioner no.2' absence from the country during the said period.

10. He further contended that from the deposition of the opposite party no. 2 given in a proceeding under section 125 Cr.P.C. in MR case no. 30 of 2016 and also from the deposition of the father of the opposite party no.2/and the mother of opposite party no.2 herein it is clear that it was only the deceased father of petitioner no.1 who had allegedly visited the house of complainant in March, 2012.

11. Accordingly petitioner submits that in the entire length and breadth of the complaint, there are no material beside omnibus allegations to form any *prima facie* case of any harassment to meet any unlawful demand or any demand of dowry to constitute offence under section 498A of IPC.

12. Learned counsel appearing on behalf of the complainant/opposite party and State raised vehemently objection against the submission made on behalf of the petitioners. It is contended on their behalf that during investigation sufficient materials have been collected and the parties should be allowed to go on for trial in order to reveal the truth. They further contended that the term "cruelty" not only confined to physical cruelty but it also extends to mental cruelty and furthermore there are recurring causes of action arose for committing offence under section 498A of IPC and as such the allegation cannot be barred on the ground of limitation. Supporting the order impugned both the *de facto* complainant and the State submits that the order is a reasoned order and is not liable to be interfered invoking this court's jurisdiction under section 482 of the Code of Criminal Procedure.

13. I have considered submissions made by both the parties.

14. Since both section 227 and 239 of Cr.P.C deals with the cases to discharge an accused where it appears to the court that there are no sufficient ground for proceeding against the accused, it would not be irrelevant to quote the principles that emerges in **Sajjan Kumar's Case**, reported in **(2010) 9 SCC 368 in para 21** which are as follows**:-**

> ***21.*** *On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*
> *(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*
> *(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.*
> *(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any*

basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.
(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.
(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.
(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.
(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

15. Coming back to the order impugned, I find that the trial court while dealt with the limitation point raised by the accused persons observed that the limitation starts from the last date that the victim faced abuse and as per the FIR the last date of assault was in 2015 and the present case was filed in the year 2016. Therefore the proceeding cannot be said to be time barred. He further observed in support of rejection of the petitioners prayer for discharge is that infliction of mental torture does not mean that the person inflicting mental torture must be physically present to commit the offence and therefore, he observed that the allegations against the accused persons cannot be ruled out and the parties should go on for trial.

16. Needless to mention here that the allegation levelled against the petitioner no.2/mother-in-law is that in the year 2012 she and her husband had insisted the *de facto* complainant for granting divorce so that their son can marry elsewhere. Apart from the ground of alibi taken by the petitioner no.2 and even without going to the question about the ground of limitation, the allegation levelled therein does not constitute any offence under section 498A or 506 against petitioner no.2 herein. Even after completion of investigation when the police submitted charge sheet they have only stated that in the month of March 2012 the petitioner no. 2 and her husband came to complainant's house at Darjeeling and told her that a divorce case was pending at Mumbai and to appear in that case and give their son a divorce so that their son gets married with someone from Nepal. No specific allegation has been attributed against the petitioner no.2 herein.

17. As mentioned above the settled law on this point is that the court cannot act merely as a post office or a mouthpiece of a prosecution while framing charge but he has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, though he is not supposed to make any roving enquiry into the pros and cons of the matter. In a series of judgments, the courts of India are unanimous of opinion that at the initial stage if there is strong suspicion, which leads the court to think that there is ground for presuming that the accused has committed an offence, then there is no bar for proceeding against the accused but if the matter remains merely in the region of suspicion, then it cannot take the place of proof of the accused person's guilt at the conclusion of trial.

18. In the present case the court below while dealt with the petitioners application for discharge has come to certain findings which might have any relevance so far as the allegation levelled against the petitioner no.1 is concerned but I am constrained to say that while he has dealt with the discharge prayer made by petitioner no.2 herein, he has merely acted as a post office and rejected her prayer for discharge without assigning any reason, though from the facts and circumstances of the case, it is palpably clear that the proceeding under the above mentioned sections is not maintainable/sustainable against the petitioner no.2. The court below while dealt with the petitioner no.2's prayer for discharge ought to have applied his judicial mind to the consideration whether or not there is any ground for presuming the commission of the offence by the petitioner no.2. He ought to have kept in mind the order relating to framing a charge affects a person's liberty substantially and therefore, sound judicial consideration is to be exercised, whether the materials warrants the framing of the charge against a particular accused or not and the court cannot blindly accept the charge sheet or the prosecution and to ask the accused to face a trial. The observation of the trial court in support of rejection in the order impugned regarding the recurring cause of action or infliction of mental torture does not have any application in so far as the petitioner no.2 herein is concerned.

19. There is often a tendency to implicate all the members of the husband's family when domestic dispute arise out of a matrimonial discord. Many times allegations against the parents and other relatives of wife make a mountain out of a molehill. Court below ought to have exercised caution in the instant case to present misuse of legal provision and the legal process and avoid unnecessary harassment of aged petitioner no.2, who is merely a family member, and has been living separately since 2002 and did not reside with the *de facto* complainant since then and as such she ought not to have dragged into criminal prosecution in the absence of specific allegation. There could be said something against petitioner no.1 as some specific allegations have been levelled against him, the veracity of which may be examined during trial. However as far as petitioner no. 2 is concerned, the allegation made against her being vague in nature does not warrant prosecution.

20. Under such circumstances on perusal of FIR, Final report and all other materials available in record I am satisfied that, it would be an abuse of the process of the court to allow the prosecution to continue against the aged mother-in-law i.e. the petitioner no.2 herein on the basis of vague and general complaint.

21. In such view of the matter, proceeding being Darjeeling Sadar women Police Station Case no. 04 of 2016, corresponding to G.R. Case no. 93 of 2016 presently pending before Judicial Magistrate Darjeeling is hereby quashed, qua the petitioner no.2 Smt. Renu Devi Sharma @ Renu.

22. **CRR 64 of 2024** thus stands 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.)