

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Criminal Revisional Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

CRR No. 116 of 2025

Tapasi Sarkar

Versus

State of West Bengal & Anr.

Mr. Avrojoyti Das

Mr. Rajdeep Das

.....For the Petitioner.

Mr. Ujjwal Luksom

Ms. Namrata Das

.....For the State.

Hearing Concluded On : 20.05.2025

Judgment on : 23.05.2025

Krishna Rao, J.:

1. The petitioner has filed the present application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 praying for quashing of the First Information Report of Siliguri Women Police Station Case

No. 17 of 2025 dated 23rd February, 2025 under Sections 85/ 324(4)/ 351(2) of the Bharatiya Nyaya Sanhita, 2023 pending before the Learned Court of Additional Chief Judicial Magistrate at Siliguri.

- 2.** The petitioner herein is the Sister-in-law of the opposite party no.2 who has initiated the above case against the petitioner and other persons before the Siliguri Women Police Station.
- 3.** Mr. Avrojoyti Das, Learned Advocate representing the petitioner submits that before initiation of the present case by the opposite party No.2, the opposite party no. 2 filed an application under Section 12 read with Sections 17, 18, 19, 20 and 22 along with an application under Section 23 of the Protection of Women from Domestic Violence Act, 2005 against the petitioner along with her husband and two others before the Learned Additional Chief Judicial Magistrate at Siliguri being Misc Case No. 144 of 2024.
- 4.** Mr. Das submits that the petitioner along with her husband preferred a Criminal Revisional Application before this Court for quashing of the said proceeding. On 12th February, 2025, this Court has quashed the said proceeding initiated by the opposite party no.2 against the petitioner and her husband. He submits that this Court has quashed the proceeding of the Protection of the Women from Domestic Violence Act, 2005 on 12th February, 2025 and immediately, the opposite party no. 2 has initiated the present case on 23rd February, 2025.

5. Mr. Das submits that the petitioner is a married woman and the marriage of the petitioner was solemnized on 2nd December, 2007 i.e. eleven (11) years before the marriage of the opposite party no.2 with the brother of the petitioner. He submits that the petitioner never shared the household with the opposite party no.2 or stayed under the same roof with the opposite party no.2.
6. Mr. Das submits that the petitioner since after her marriage residing with her husband and in-laws at her matrimonial home which is far away for the house of the opposite party no.2.
7. Mr. Das submits that the opposite party no.2 has initiated the instant criminal proceeding against the petitioner with an oblique motive to wreck the personal vendetta. He submits that there is no iota of evidence which can prove the allegation made by the opposite party no. 2 against the petitioner for the offence under Sections 85/324(4)/351(2) of the Bharatiya Nyaya Sanhita, 2023.
8. Mr. Das in support of his submissions, has relied upon the following judgments:
 - i. *Dara Lakshmi Narayana & Ors. vs. State of Telangana & Anr. passed in Special Leave Petition (Criminal) No. 16239 of 2024 dated 10th December, 2024.*
 - ii. *Deepak Chatterjee @ Dipak Chatterjee & Ors. vs. State of West Bengal & Anr. reported in CRR 261 of 2020 dated 8th June, 2023.*
 - iii. *Rupen Dhar & Ors. vs. State of West Bengal & Ors. passed in CRR No. 93 of 2021 dated 17th May, 2023.*

iv. Kahkashan Kausar @ Sonam & Ors. vs. State of Bihar & Ors. passed in Criminal Appeal No. 195 of 2022 (arising out of SLP (Crl.) No. 6545 of 2020) dated 8th February, 2022.

v. Sushil Kumar Sharma vs. Union of India & Ors. reported in 2005 (5) Supreme 137.

9. Mr. Ujjwal Luksom, Learned Advocate representing the State submits that on the basis of the written complaint of the opposite party no.2, the Siliguri Women Police Station registered the case and the opposite party no.2 in her written complaint, a specific allegation made against the present petitioner which constitute the offences under Section 85/324(4)/351(2) of the Bharatiya Nyaya Sanhita, 2023.
10. Mr. Luksom submits that the Investigating Office also recorded the evidence of the concern witnesses relating to the instant case which also corroborate the case of the opposite party no.2.
11. Mr. Luksom submits that sufficient materials collected by the Investigating Officer during investigation against the petitioner and thus it cannot be said that the petitioner is not involved in the instant case.
12. The marriage between the opposite party no.2 and the brother of the petitioner was solemnized on 2nd December, 2018. The petitioner got married in the year 2007 and since her marriage, the petitioner is residing with her husband and in-laws.

- 13.** The complaint lodged by the opposite party no. 2 against the petitioner and other others reads as follows:

“This is to inform you that on 02.12.2018 I got married with Tanmay Saha, Son of Late Rabindranath Saha of Matigara, Ramkrishna Pally, Police Station: Matigara, District: Darjeeling as per Hindu Rites and customs. After few days of marriage, my husband and his family members started mental and physical torture upon me and to separate my husband from me. The family members of my matrimonial house parted away from my husband and my father-in-law, mother-in-law and sister-in-law partitioned their property in between them and after few days they sold their share property to a promoter/ developer. I and my husband were residing at my husband's share of the property bearing all the torture and injustice. Thereafter on 02.10.2022 I gave birth to a male child, namely Yuvan Saha. After giving birth to my child my husband on instigation of my in-laws took me to my parental house and left there and in spite of the fact that I was not well and also weak at that relevant point of time. Thereafter my husband and his family members stopped keeping contact with me and my newly born child. Thereafter the accused persons took my husband to their house. Thereafter they stopped all contacts with me and my child and stopped maintenance. After that I started earning from a beauty parlor setup by me. After that one day when I went outside for some reason, the accused persons along with my husband tried to demolish my residence and parlor and after getting information from my neighbors I personally came there and protested vehemently and saved my residence. I have got video recording of the said incident. Due to the said incident I become unemployed and I returned back my old job as a Civic Volunteer. After that when my husband tried to establish contact with me, the accused persons (Tapashi Sarkar, Bharati Saha) restricted him. After joining as Civil Volunteer within few days I rebuild my parlor and home and started living there. Even thereafter my in-laws by different means carried on their physical and mental torture. One day my residence electric connection was disconnected. Thereafter finding no other

alternatives on 25.09.2024 I filed a case under the Domestic Violence Act before the Sub-Divisional Court, Siliguri against Tapashi Sarkar, Bharati Saha, my husband Tanmoy Saha and the husband of the sister-in-law Priyatosh Sarkar. The filing number of the said case is 3018 of 2024, date 25.09.2024 corresponding to registration no. 143 of 2024, date 25.09.2024. Thereafter on 20.02.2025 I came to know from various sources that my husband Tanmoy Saha is having an illicit relationship with one married woman, namely Puja Biswas. My sister-in-law and my mother-in-law started negotiating illegal marriage proposal for my husband with that married lady. I think the motive of the accused persons is to create hindrance in the relationship in-between me and my husband and they do not want to take care of child and they want to create an illegal relationship in-between my husband and the said married lady.”

In these circumstances I request your kind office to verify the truth and take necessary action against Tapashi Sarkar and Bharati Saha.

Your faithfully

*Sd/-
Debjani Saha Dey.”*

14. As per the complaint lodged by the opposite party no. 2 few days after the marriage of the opposite party no.2, her husband and his family members started physical and mental torture upon her. She has not made any complaint to any of the authorities till the 24th September, 2024 and on 25th September, 2024, the opposite party no.2 has initiated a case under the Protection of Women from Domestic Violence Act, 2005.

15. The petitioner has challenged the proceeding initiated by the opposite party no. 2 against the petitioner under Protection of Women from

Domestic Violence Act, 2005 before this Court and this Court being **CRR No. 475 of 2024 (Tapasi Sarkar and Another Vs. The State of West Bengal and Others)** and this Court has disposed of the said case on 12th February, 2025 by passing the following order:

“On perusal of the relevant documents as annexed with the present case and upon consideration of the submissions made, it appears that the petitioner no.1 being the sister-in-law of the complainant has been married with the petitioner no.2 prior to the complainant having been married to the brother of the petitioner no.1. Since after marriage, the petitioner no.1 has left her paternal home and started residing with the petitioner no.2 at the address mentioned above. Hence, it is evident from the record that since after marriage of the complainant with the brother of the petitioner no.1, neither the petitioner no.1 nor petitioner no.2 have ever resided in a shared household with the opposite party no.1, being her family members or related to her through marriage. Hence, in terms of the definition of “domestic relationship” as enumerated under Section 2(f) in the Act of 2005, the petitioners would not be considered to be in relationship of that nature with the complainant, so as to be covered under the provisions of the said Act of 2005.

The Trial Court having not considered the fact as above, has registered the Misc. Case No.144 of 2024 under Section 23 of the PWDV Act as against the present petitioners. Hence, the decision of the Trial Court, thereby registering the case under the relevant provision of the PWDV Act, against the present petitioners, appear to be not in confirmation with the statutory provision. Hence, the same is liable to be set aside.”

16. Immediately after the order passed by this Court dated 12th February, 2025, the opposite party no. 2 has initiated the present proceeding.

17. In the case of **Sushil Kumar Sharma (Supra)**, the Hon'ble Supreme

Court held that :

“18. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon. If the cry of “wolf” is made too often as a prank, assistance and protection may not be available when the actual “wolf” appears. There is no question of the investigating agency and courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that the ultimate objective of every legal system is to arrive at the truth, punish the guilty and protect the innocent. There is no scope for any preconceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide and generalised a statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of a watchdog and not of a bloodhound. It should

be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.”

18. In the case in hand also the opposite party no.2 in her written complaint has dragged all the family members of her husband though there is no specific allegation against each of the family members. As regard to the allegation against the petitioner herein it is stated in the complaint that the petitioner along with others just after marriage started physical and mental torture upon the opposite party no. 2 but the marriage was solemnized in the year 2018 and she has not lodged any complaint till 24th September, 2024.

19. In the case of ***Kahkashan Kausar @ Sonam & Ors. (supra)***, the Hon’ble Supreme Court held that:

“12. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives.

13. This Court in its judgment in **Rajesh Sharma and Ors. Vs. State of U.P. & Anr.**, has observed:

“14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the statement of Objects and Reasons of the Act 46 of 1983. The expression 'cruelty' in Section 498A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be filed under already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement.”

14. Previously, in the landmark judgment of this court in **Arnesh Kumar Vs. State of Bihar and Anr.**, it was also observed:-

“4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite

number of cases, bed-ridden grandfathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.”

15. Further in *Preeti Gupta & Anr. Vs. State of Jharkhand & Anr.*, it has also been observed:

“32. It is a matter of common experience that most of these complaints under section 498A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. 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 of husband's close relations 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 complaint are required to be scrutinized with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.”

16. In Geeta Mehrotra & Anr. Vs. State of UP & Anr., it was observed:

“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of **G.V. Rao vs. L.H.V. Prasad & Ors. reported in (2000) 3 SCC 693** wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

“there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, 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 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 reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the 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.” The view taken by the judges in this matter was that the courts would not encourage such disputes.”

17. Recently, in **K. Subba Rao v. The State of Telangana**, it was also observed that:

“6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”

18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC 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.”

20. In the case of ***Dara Lakshmi Narayana & Ors. (supra)***, the Hon’ble Supreme Court held that:

“24. *Insofar as appellant Nos.2 to 6 are concerned, we find that they have no connection to the matter at hand and have been dragged into the web of crime without any rhyme or reason. A perusal of the FIR would indicate that no substantial and specific allegations have been made against appellant Nos.2 to 6 other than stating that they used to instigate appellant No.1 for demanding more dowry. It is also an admitted fact that they never resided with the couple namely appellant No.1 and respondent No.2 and their children. Appellant Nos.2 and 3 resided together at Guntakal, Andhra Pradesh. Appellant Nos. 4 to 6 live in Nellore, Bengaluru and Guntur respectively.*

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.”*

- 21.** The petitioner got married in the year 2007 and since then the petitioner is residing with her husband and in-laws. The petitioner is not residing in her parents' house or with the opposite party no. 2. From record, it is established that the eleven (11) years prior to marriage of the opposite party no. 2, the marriage of the petitioner took place and the petitioner is residing with her husband and in-laws.
- 22.** This Court also perused the case diary and the statement of the witnesses recorded by the Investigating Officer during investigation, this Court did not find any allegation against the petitioner except the bald allegation made in the complaint.
- 23.** This Court also finds that initially the opposite party no. 2 has initiated a case against the petitioner under the Protection of Women from Domestic Violence Act, 2005 and the opposite party no.2 could not succeed in the said proceeding and just after dismissal of the said case against the petitioner, the opposite party no. 2 has initiated the present proceeding.
- 24.** Considering the above, this Court find that this is a fit case to invoke the provisions of Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 by quashing the proceeding initiated against the petitioner for the offence under Section 85/324(4)/351(2) of the Bharatiya Nyaya Sanhita, 2023.

25. In view of the discussion above, the proceeding initiated against the petitioner being First Information Report of Siliguri Women Police Station Case No. 17 of 2025 dated 23rd February, 2025 under Section 85/324(4)/351(2) of the Bharatiya Nyaya Sanhita, 2023 pending before the Learned Court of Additional Chief Judicial Magistrate at Siliguri are set aside and quashed.

26. The petitioner is discharged from the instant case.

27. C.R.R. No. 116 of 2025 is allowed.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)