

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

Present:

The Hon'ble Justice Krishna Rao

CRR No. 128 of 2025

Ramjan Ali @ Mia & Ors.

Versus

The State of West Bengal & Anr.

Mr. Gobinda Saha

Ms. Priyanka Dey

.....For the Petitioners.

Mr. Kallol Acharjee

Mr. Tapan Bhattacharjee

.....For the State.

Hearing Concluded On :19.05.2025

Judgment on : 23.05.2025

Krishna Rao, J.:

1. The petitioners have filed the present application under Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with Section 528 of the of the Bharatiya Nagarik Suraksha Sanhita 2023, praying for

quashing of the proceeding of Sitalkuchi Police Station Case No. 413 of 2024 dated 1st September, 2024 under Sections 85/108 of the Bharatiya Nyaya Sanhita, 2023, Charge Sheet No. 509 of 2024 corresponding to G.R. Case No. 1475 of 2024 pending before the Learned Additional Chief Judicial Magistrate, Mathabhanga.

- 2.** The father in law of the petitioner no.1 has filed a written complaint before Sitalkuchi Police Station on 1st September, 2024, against all the petitioners alleging that four (4) years before marriage between the petitioner no.1 and the daughter of the complainant was solemnized as per “Muslim Sariyat”. At the time of marriage, the complainant has given several household articles as dowry demand. After few years of marriage, the petitioners started torturing the daughter of the complainant both mentally and physically by demanding more dowries. The complainant paid Rs. 50,000/- to the petitioner no.1. On 22nd August, 2024, the daughter of the complainant tried to commit suicide by consuming poison at the house of the petitioner no.1 and on getting information, the complainant went to the house of the petitioner no.1 and taken his daughter to Sitalkuchi BPHC for her treatment and from the said hospital, the daughter of the complainant was referred to S.D. Hospital, Mathabhanga.
- 3.** On receipt of the said complaint, the Police of P.S. Sitalkuchi registered the above case against all the petitioners and on completion of investigation, filed charge sheet against all the petitioners for the offence under Section 85/108 of the Bharatiya Nyaya Sanhita, 2023.

4. On receipt of charge sheet, the Learned Magistrate has taken cognizance for the offence under Section 85/108 of the Bharatiya Nyaya Sanhita, 2023.
5. Mr. Gobinda Saha, Learned Advocate representing the petitioners submits that as per complaint, the wife of the petitioner no.1 tried to commit suicide by consuming poison and she was taken to hospital for treatment. The wife of the petitioner no.1 recovered from her illness suffered due to consumption of poison but the police has registered case under Section 85/108 of the Baratiya Nyaya Sanhita, 2023, and filed charge sheet for the same offence and the Learned Magistrate has taken cognizance for the said offence though the wife of the petitioner no.1 is alive.
6. Mr. Saha submits that the petitioner no.1 is the husband of the victim, the petitioner no. 5 and the petitioner no.6 are the father-in law and mother-in-law of the victim and the petitioner nos. 2 and 3 are the uncles of the petitioner no.1 and the petitioner no. 4 is the aunt of the petitioner no.1. He submits that the Police has registered the case against all the petitioners as name of all petitioners are mentioned in the written complaint but there is no evidence against any of the petitioners for the offence under Section 85/108 of the Baratiya Nyaya Sanhita, 2023.

- 7.** Mr. Saha submits that though the police has completed investigation and submitted charge sheet but other than the written complaint, there is no iota of evidence against the petitioners. He submits that the petitioners have demanded dowry at the time of marriage and the complainant has provided dowry but other than the bald complaint, the Investigating Officer has not seized or prepared any inventory of the articles which the complainant has provided to the petitioner no.1 at the time of marriage as dowry.
- 8.** Mr. Saha submits that it is alleged that the complainant on demand of the petitioners, has paid an amount of Rs. 50,000/- but there is no document or any evidence to prove that the petitioners have demanded dowry and the complainant has paid Rs. 50,000/- as dowry.
- 9.** Mr. Saha submits that no case is made against any of the petitioners for the offence under Section 85/108 of the Baratiya Nyaya Sanhita, 2023.
- 10.** Mr. Kallol Acharjee, Learned Advocate representing the State submits that due to the torture committed by the petitioners upon the victim, being the wife of the petitioner no.1, tried to commit suicide and the medical report of the victim supports the complaint.
- 11.** Mr. Acharjee submits that immediately the victim was taken to hospital wherein proper treatment was provided to the victim and the Investigating Officer has collected medical report which *prima facie*

proved the case of the complainant that due to harassment by the petitioners upon the victim, the victim tried to commit suicide.

- 12.** Mr. Acharjee submits that during investigation, several evidences have been collected to prove the case against the petitioners. He submits that during investigation, the Investigating Officer has recorded the statements of witnesses under Section 161 of the Cr. P.C. wherein all the witnesses have stated the petitioners have committed physical and mental torture upon the victim and also demanded dowry from victim.
- 13.** As per FIR at the time of marriage, the complainant has given various household articles as dowry demand and after few days of marriage, the accused persons started torturing the victim both physically and mentally due to demand of dowry. It is also the allegation that the complainant being the father of the victim has paid Rs. 50,000/- to his son-in-law.
- 14.** On 22nd August, 2024, the victim consumed poison and immediately she was taken to hospital. The police has collected injury report of the victim which *prima facie* proved that the victim was treated at the hospital for consuming poison and the alleged incident was happened in the matrimonial house of the victim. Whether the victim has consumed poison due to harassment and physical and mental torture by the in-laws or the husband is the matter of trial. This Court has also gone through the statement of the witnesses recorded under

Section 161 of the Cr.P.C. which indicates the involvements of the husband and the in-laws of the victim.

- 15.** As regard to the involvement of petitioner nos. 2, 3 and 4 who are the uncles and aunt of the husband of the victim there is no specific allegation against them. In the written complaint, the father of the victim has stated the name of the petitioner nos. 2, 3 and 4 but in the statement under Section 161 of the Cr.P.C. there is no allegation against the petitioner no.2, 3 and 4.
- 16.** This Court finds that only to entangle all the relatives of the husband of the victim, the father of the victim has narrated the names of the petitioner nos. 2, 3 and 4. On perusal of materials on record, this Court did not find any materials against the petitioner nos. 2, 3 and 4.
- 17.** The Police has registered the case on the basis of the written complaint of the father of the victim wherein he has alleged that the victim has consumed poison but the police has registered the case under Section 85/108 of the Bharatiya Nyaya Sanhita, 2023 and have also filed charge sheet for the said offence though the victim is alive. This act of the police authority shows that how negligently the police has initiated the FIR and filed charge sheet for the offence under Section 85/108 of Bharatiya Nyaya Sanhita, 2023 though the victim is alive.
- 18.** The matter does not end there. Though the police in a negligent manner have initiated FIR and filed charge sheet under Section

85/108 of the BNS, the Learned Magistrate has also taken cognizance of the offence under Section 85/108 of the Bharatiya Nyaya Sanhita, 2023 against all the petitioners vide order no. 7 dated 18th December, 2024. This shows that the Learned Magistrate in a casual manner taken cognizance without going through the materials on record.

19. This Court finds that the police has wrongly initiated FIR and filed charge sheet against the petitioners for the offence under Section 108 of Bharatiya Nyaya Sanhita, 2023 and the Learned Additional Chief Judicial Magistrate has wrongly took cognizance for the offence under Section 108 of the Bharatiya Nyaya Sanhita, 2023, thus Section 108 of the Bharatiya Nyaya Sanhita, 2023 from FIR and Charge Sheet is set aside and quashed. Consequently, the cognizance taken by the Learned Magistrate vide order no. 7 dated 18th December, 2024 with regard to the offence under Section 108 of Bharatiya Nyaya Sanhita, 2023, is also set aside. Learned Additional Chief Judicial Magistrate, Mathabhanga, Officer-in-Charge of Sitalkuchi Police Station and the Investigating Officer of this case are hereby cautioned not to repeat such illegality in future.

20. On perusal of FIR and charge sheet would indicate that no substantial and specific allegation have been made against the petitioner nos. 2, 3 & 4. It is also reveals from the case diary to the petitioner nos. 2, 3 & 4 never resided with the petitioner no. 1 and the victim.

21. In the recent judgment of the Hon'ble Supreme Court in the case of ***Dara Lakshmi Narayana & Ors. -vs- State of Telangana & Anr.***

reported in **2024 INSC 953** held that :

“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.”

22. Considering the above, this Court did not find any sufficient materials against the petitioner no.2, namely, Alamgir Miah @ Miya, the petitioner No.3, namely, Juljalal Mia @ Dilip Mia and the petitioner no.4, namely, Abeya Bibi for the offence under Section 85 of the Bharatiya Nyaya Sanhita, 2023.

23. In view of the above proceeding of Sitalkuchi Police Station Case No. 413 of 2024 dated 1st September, 2024, under Section 85 of the Bharatiya Nyaya Sanhita, 2023, Charge Sheet No. 509 of 2024

corresponding to G.R. Case No. 1475 of 2024 pending before the Learned Additional Chief Judicial Magistrate, Mathabhanga against the petitioner nos. 2, 3 and 4 are hereby set aside and quashed.

24. The petitioner nos. 2, 3 and 4 are discharged from their respective bail bonds.

25. C.R.R. No. 128 of 2025 is disposed of.

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.)