

**IN THE CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE
(Via Video Conferencing)**

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

C.R.R 213 of 2024

**Abitab Chawan @ Abitab Chawhan
-Vs-
The State of West Bengal and Anr.**

For the Petitioners : Mr. Thupdan Gyertso Bhutia, Adv.
Mr. Debabrata Rai, Adv.
Mr. Sanjeev Kr. Gupta, Adv.
Mr. N Gurung, Adv.
Mr. Pallav Sharma

For the De facto
Complainant : Mr. Shubhankar Dutta, Adv.

For the State : Mr. Aditi Shankar Chakraborty, Adv.
Mr. Ujjal Luksom, Adv.

Hearing concluded on : 10.01.2025

Judgment on : 11.04.2025

Uday Kumar, J:

1. This revisional application, preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC"), seeks quashing of G.R. Case No. 3501 of 2023, arising out of Matigara Police Station Case No. 762/23 dated 15.09.2023, registered under Sections 498A/506 of the Indian Penal Code, 1860 (hereinafter referred to as

“IPC”), and pending before the Court of the Learned Additional Chief Judicial Magistrate, Siliguri. The primary ground urged by the petitioner is that the First Information Report (FIR) does not disclose the commission of any offence against him and the allegations labelled are intended to tarnish his reputation in society, asserting his false implication in the case.

- 2.** The genesis of the present proceeding lies in a written complaint lodged by the opposite party no. 2, Amrita Chhetri, with the Officer-in-Charge of Matigara Police Station on 15.09.2023. In her complaint, Mrs. Chhetri alleged that her marriage with the petitioner, Abitab Chawan @ Abitab Chawhan, was solemnized in 2015, and they cohabited as husband and wife at their residence in Siliguri. However, she stated that the petitioner was now residing separately in Sikkim.
- 3.** The crux of the allegations revolves around the discovery of the petitioner's alleged extramarital affair approximately a month prior to the filing of the complaint. Mrs. Chhetri averred that upon objecting to this relationship, the petitioner reacted adversely, subjecting her to mental and physical torture. This allegedly included verbal abuse in filthy language, harassment through offensive messages, attempts to restrict her movement even for work, threats to her life, and infliction of injuries endangering her life and limb. Mrs. Chhetri claimed that her efforts to reconcile with the petitioner were thwarted by his persistent torment.

4. Based on this complaint, the Matigara Police Station initiated Case No. 762 of 2023 under Sections 498A/506 IPC against the petitioner. The investigation was entrusted to a lady Assistant Sub-Inspector, who, after recording the statements of several witnesses, submitted a charge-sheet vide No. 782/2023 on 30th October, 2023, before the Learned Additional Chief Judicial Magistrate, Siliguri, who taken cognizance of the offences under Sections 498A/506 IPC on 20.12.2023, in G.R. Case No. 3501 of 2023.
5. Mr. Thupdan G. Bhutia, learned counsel appearing on behalf of the petitioner, advanced several contentions seeking the quashing of the proceedings. Firstly, he submitted that the petitioner had declined to sign on an application for divorce on mutual consent under Section 13B of the Hindu Marriage Act, 1955, sent by the opposite party no. 2, as he desired to continue in the marital relationship with her. He further argued that despite their separate residence for the past three years, they continued to be business partners and the petitioner was still bearing the expenses of their children. Aggrieved by the petitioner's refusal to consent to the divorce, the opposite party no. 2 allegedly falsely implicated him in the present case.
6. A significant limb of the petitioner's argument rested on the assertion that the FIR lacked any specific instances of physical or mental torture, rendering the allegations omnibus in nature. Relying on the pronouncements of the Hon'ble Supreme Court in *State of Haryana vs Bhajan Lal and others* [1992 Supp (1) SCC 335] and *Achin Gupta vs.*

State of Haryana and another [2024 SCC Online SC 759], as well as the view of this Court in *CRR 93 of 2021 (Rupen Dhar and Others vs. The State of West Bengal and Others)* decided on 17th May, 2023, the learned counsel contended that mere allegations of emotional and physical torture without specific details are insufficient to attract the provisions of Section 498A IPC. Consequently, he prayed for the quashing of the pending proceedings.

7. Per contra, Mr. Shubhankar Dutta, learned counsel representing the opposite party no. 2, vehemently opposed the prayer for quashing. He reiterated the sequence of events as narrated in the complaint, emphasizing the cohabitation of the parties since their marriage in 2015 and the subsequent discord arising from the petitioner's alleged extramarital affair. He submitted that upon the wife's objection, the petitioner retaliated by physically abusing her, sending offensive messages, confining her, and even attempting to kill her.
8. He further argued that the charge sheet was filed after due investigation, disclosing sufficient material against the petitioner. He refuted the petitioner's claim regarding the divorce petition, asserting it to be a false and concocted story. He pointed out the absence of any postal stamp or date on the envelope produced by the petitioner, suggesting that the opposite party no. 2 never intended to seek a divorce nor sent any such application. Furthermore, he contended that the baseless allegations labelled by the petitioner against the opposite party no. 2 themselves constituted mental cruelty. He concluded by asserting that offenses of

cruelty and torture against women are continuous in nature and prayed for the dismissal of the petition.

- 9.** Mr. Aditi Shankar Chakraborty, learned counsel appearing on behalf of the State, submitted that the case is at the stage of framing charges, which marks the commencement of the trial. He argued that prima facie sufficient material exists on record to proceed with the trial and that the grounds raised by the petitioner involve disputed questions of fact that can only be adjudicated upon based on evidence adduced during the trial. He maintained that there was sufficient material to indicate a strained relationship between the husband and wife and that they were not living together. Therefore, he contended that there was no scope to quash the proceedings based on mere assumptions.
- 10.** The core questions that emerge for consideration in this revisional application are:

 - i. Whether emotional and psychological abuse, even without specific instances, can amount to cruelty under Section 498A IPC?
 - ii. Whether physical and mental cruelty and emotional abuse are valid grounds under Section 498A IPC?
- 11.** The undisputed facts gleaned from the material on record reveal that the parties entered into matrimony in 2015 and initially shared a conjugal life in Siliguri. Their matrimonial relationship was seemingly harmonious, resulting in children and a joint business venture operating

as a limited liability partnership. The record does not indicate any significant discord during this initial period.

12. A discernible shift in their relationship appears to have occurred upon the opposite party no. 2's discovery of the petitioner's alleged extramarital affair. Her objection to this relationship purportedly triggered a negative reaction from the petitioner, leading to allegations of abuse, assault, insults, threats, and even an attempt on her life. The initial amity and understanding were allegedly replaced by animosity, culminating in the wife filing a police complaint.
13. The petitioner's plea for quashing the proceedings rests on the assertion of false implication and malicious intent to tarnish his reputation. Section 482 Cr.P.C. vests inherent powers in the High Court to make such orders as may be necessary (a) to give effect to any order under this Code, or (b) to prevent abuse of the process of any Court, or (c) otherwise to secure the ends of justice.
14. These inherent powers, however, are to be exercised sparingly and with circumspection, and that too in the rarest of rare cases, depending on the specific facts and circumstances of each case. The power is extraordinary and should not be invoked routinely.
15. The Hon'ble Supreme Court in *State of Haryana and Ors. vs Bhajan Lal and Ors.* [1992 Supp (1) SCC 335] laid down certain categories of cases where the inherent power under Section 482 Cr.P.C. can be exercised to quash criminal proceedings. Sub-paragraph (7) of paragraph 102 of the said judgment is particularly relevant, which provides for the exercise of such power:

"(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

- 16.** However, it is imperative that such mala fide or malicious intent must appear prima facie from the material on record. A proceeding cannot be quashed merely on the basis of surmises and conjectures. The inherent powers are to be used cautiously and not as an alternative to statutory remedies, nor to interfere with the jurisdiction of the lower courts or to scuttle a fair investigation or prosecution.
- 17.** The petitioner has also placed reliance on the observations made by the Hon'ble Supreme Court in *Preeti Gupta v. State of Jharkhand* [(2010) 7 SCC 667], particularly paragraph 30, which highlights the common experience of misuse of Section 498A IPC in the heat of the moment over trivial issues and with oblique motives. The Court also expressed concern about the increasing number of genuine cases of dowry harassment.
- 18.** The Hon'ble Supreme Court in *Preeti Gupta* (supra) also emphasized the social responsibility of members of the Bar to ensure that the social fabric of family life is not ruined by exaggerated versions of minor incidents reflected in criminal complaints and to make serious endeavour to help parties arrive at amicable resolutions.
- 19.** The Hon'ble Supreme Court further redefined the objective of justice to include the protection of the innocent from false cases, observing the tendency of implicating the husband and all his immediate relations and

the protracted and painful nature of criminal trials in matrimonial disputes.

- 20.** Recognizing the potential for misuse of Section 498A IPC, the Hon'ble Supreme Court in *Preeti Gupta* (supra) called for a serious relook of the provision by the legislature, noting the exaggerated versions and the tendency of over-implication in a large number of complaints, leading to immense suffering and social unrest.
- 21.** For the purpose of determining whether the present proceeding is malicious and liable to be quashed, the prima facie facts emanating from the written complaint and other documents on record must be considered.
- 22.** In the present conspectus, a perusal of the written complaint lodged by Amrita Chhetri on 15.09.2023, reveals specific allegations against her husband, the petitioner, under Sections 498A/506 IPC. She stated that after discovering his alleged extramarital affair, her objection led to threats, attempts on her life, verbal abuse, and restrictions on her movement.
- 23.** The complaint clearly articulates the sequence of events, starting from the alleged discovery of the affair to the subsequent alleged acts of torture and threats. While the petitioner's counsel argues that these allegations lack specific details, they do provide a broad framework of the alleged conduct that forms the basis of the offenses under Sections 498A and 506 IPC.
- 24.** The investigation conducted by the I.O. resulted in a charge-sheet being filed under the said Sections, and the Learned Magistrate, after applying

judicial mind, took cognizance of the offenses. The case is now at the stage of framing charges, which is a crucial juncture before the commencement of the trial.

- 25.** The principles enunciated by the Hon'ble Supreme Court in *Achin Gupta vs. State of Haryana and another* [2024 SCC Online SC 759] regarding the power of the police to investigate and the limited scope of the High Court's inherent powers at the stage of investigation and cognizance are pertinent. The High Court would not typically embark upon an inquiry into the reliability of the evidence at this stage.
- 26.** While it is noted that the relationship between the parties was seemingly cordial until the alleged discovery of the extramarital affair, and they continue to be business partners, this does not automatically negate the allegations of cruelty that purportedly arose subsequently.
- 27.** The alleged paradigm shift in the petitioner's behaviour upon being confronted about the affair, leading to threats, abuse, and confinement, as stated in the complaint, cannot be brushed aside at this stage as being inherently improbable or malicious. The wife's attempt to adjust despite this alleged conduct, ultimately failing due to continuous emotional and physical torture, led to the lodging of the complaint.
- 28.** The petitioner's contention regarding the divorce petition and the wife's alleged malicious intent due to his refusal to sign it is seriously undermined by the absence of any postal endorsement on the envelope produced by him. The opposite party no. 2 has categorically denied sending any such petition or intending to seek a divorce. The fact that they were living together since 2015 without any reported disputes and

continue to run a business together highlights the seemingly harmonious nature of their relationship prior to the alleged affair. The issue of the divorce petition remains a contentious fact that requires to be proved on trial.

- 29.** Even assuming, for the sake of argument, that the issue of divorce was raised, threatening a spouse with divorce could, in certain contexts, contribute to mental cruelty, especially if done with the intent to harass or coerce. However, this is a matter of evidence to be considered by the Trial Court.
- 30.** The fact that the complainant-wife resides in Siliguri while the petitioner resides in Sikkim, and the petitioner blaming the wife for seeking divorce, are circumstances that could potentially constitute matrimonial cruelty if duly proved before the Trial Court. These are disputed questions of fact that cannot be conclusively determined in an application under Section 482 Cr.P.C. The function of assessing the reliability of evidence lies with the Trial Judge. As informed by the learned counsel for the State, the record was fixed for framing charges on 10th January itself, indicating that the case is poised to proceed to trial. It would be more appropriate for the petitioner to face the trial where he can present his defence and challenge the allegations.
- 31.** Considering the contents of the written complaint and the charge-sheet, which prima facie disclose the substance of cruelty allegedly inflicted by the petitioner upon the complainant-wife and the reasons thereof, there is nothing on record at this stage to conclusively establish that the petitioner has been falsely implicated. Therefore, the observations of the

Hon'ble Supreme Court in *Preeti Gupta* (supra), while highlighting the potential for misuse of Section 498A IPC, do not automatically apply to the facts of the present case to warrant quashing.

32. As the FIR, prima facie, discloses the commission of offenses under Sections 498A and 506 IPC, the guidelines laid down in *Bhajan Lal's* case (supra) for quashing proceedings are not squarely applicable here. This Court does not find sufficient prima facie material on record to quash the pending criminal case against the petitioner at this stage.
33. The learned counsel for the petitioner relied on the decision of a Co-ordinate Bench of this Court in *CRR 93 of 2021 (Rupen Dhar)* (supra), where a proceeding initiated after a long delay of more than eight years was quashed on the ground of mal-intention and abuse of the process of the Court.
34. However, the facts and circumstances of the present case are distinguishable from *Rupen Dhar* (supra). Here, the complaint was filed relatively promptly after the wife allegedly came to know about the extramarital affair and the subsequent alleged acts of cruelty. The petitioner did not raise any issue of delay. Furthermore, allegations of cruelty against women are often considered continuing offenses. Therefore, any potential delay in filing the complaint, if any, would not necessarily amount to a patent abuse of the process of the Court at this stage. Such issues are disputed questions of fact that should be determined by the Trial Court based on the evidence on record.

Conclusion

- 35.** After examining the written complaint, the charge-sheet, and the arguments presented, this Court finds that there is prima facie material to proceed with the trial. The allegations made by the opposite party no.2, while general in nature, do suggest a case of continuous physical and mental cruelty as well as emotional abuse, which is recognized as a form of cruelty under Section 498A IPC. Moreover, the Court finds no sufficient ground to conclude that the proceedings are malicious or meant to harass the petitioner at this stage.
- 36.** After considering the facts, submissions, and legal precedents, I find that the allegations made by the opposite party no.2 in the FIR, while general in nature, are not entirely frivolous or without merit. The opposite party no.2's claims of emotional abuse, threats, and mental cruelty — though not detailed with specific dates or incidents — paint a picture of prolonged distress, would amount to cruelty under Section 498A IPC.
- 37.** It is well established in legal jurisprudence that cruelty in matrimonial relationships need not always be physical. Mental and emotional cruelty, especially in the form of harassment or threats, can also amount to cruelty under Section 498A IPC. The respondent's allegations of threats to her life and mental anguish, even though broad, reflect the kind of emotional distress that is recognized as cruelty in law.
- 38.** The petitioner's contention that the FIR lacks specificity does not, at this stage, warrant quashing. While it is true that the allegations could have been more precise, matrimonial disputes often involve subjective

experiences of abuse that may not be easily proven through clear-cut evidence. The Court must refrain from making any premature conclusions about the veracity of the allegations without allowing the investigation and trial process to unfold.

39. In light of the above discussion, I do not incline to exercise the inherent powers under Section 482 Cr.P.C to quash the proceedings at this stage. The allegations in the FIR and the material collected during the investigation prima facie disclose the commission of cognizable offenses. The petitioner will have ample opportunity to present his defence and challenge the allegations during trial.
40. In view of the above, petitioner's plea for quashing the criminal proceedings is, therefore, dismissed.
41. Accordingly, the revisional application being **CRR No. 213 of 2024** is hereby **dismissed**.
42. There is shall be no order as to costs.
43. Interim orders, if any, stand vacated.
44. The trial court is directed to expedite the trial proceedings.
45. Both parties are encouraged to explore the possibility of reconciliation through counselling or any other alternative dispute resolution mechanisms that may be available.
46. Urgent photostat certified copy of this judgment, if applied for, be given to the parties as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Uday Kumar, J.)