

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 213 of 2024

**Sukanta Chattopadhyay
Vs.
Kakali Bhattacharya**

For the Petitioner : Mr. Apalak Basu
Mr. Nilanjan Pal
Mr. Swapnamoy Sarkar

For the Opposite Party : Mr. Manabendra Thakur
Mr. Umer Sadhique
Mr. Partha Sarathi Das
Ms. Swarnali Ghosh
Ms. Maria Sharwari
Ms. Purnima Panda

Heard on : 30.03.2026

Judgment on : 04.05.2026

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioner herein has assailed the proceeding being CR No. 187 of 2017 under section 500 of IPC presently pending before Learned Judicial magistrate, 3rd court ChandanNagar.

2. The petitioner states that he was the Headmaster of a school and retired from his service on 30.09.2023. The husband of the opposite party

herein was appointed as an assistant teacher of the said school in March 1988. He was issued a charge sheet on 07.05.2002, calling upon him to give reply within a fortnight, but he did not give any reply within the stipulated period. After issuing the aforesaid charge sheet, the school authority sent proposal on 30.05.2002 to the Secretary of the West Bengal Board of Secondary Education, for dismissal of the husband of the opposite party herein from his service. In reply, the Board of Secondary Education by a letter dated 02.08.2002, requested the school authority to follow the direction contained in the Board Circular no. S/606 dated 21.06.1982.

3. Thereafter, the managing committee of the said school in its meeting dated 25.09.2002 vide MC Resolution no. 03(b) resolved to suspend the husband of the opposite party herein with immediate effect in terms of aforesaid Board's circular and as a result he was suspended with effect from 27.09.2002. Thereafter the said school by a letter dated 30.09.2002 prayed before the said Board for granting approval of his suspension, in response to which the Board granted approval to the aforesaid proposal of the school on 24.12.2002.

4. The husband of the opposite party thereafter filed a writ petition before this High Court, being WP No. 8238(W) of 2003 challenging the suspension order and the approval of the said Board. This High Court while disposing the said Writ Petition directed the school authorities to initiate an enquiry against him in accordance with law for the purpose of probing the charges and ultimately after giving an opportunity of hearing to him. If the school authorities want to inflict any order of punishment, in that case the same must be subject to the approval of the Director of School Education.

5. In terms of the aforesaid order of the High Court, the school authority had initiated the enquiry proceeding and thereafter the enquiry officer submitted report before the School authority. However, the husband of opposite party did not reply to the said enquiry report and therefore the managing committee of the said school in its meeting dated 01.10.2005 proposed to remove him and such proposal was sent to the Director of school education on 13.01.2006 for necessary approval.

6. During pendency of the said approval, the husband of the opposite party herein filed another Writ Petition being WP no. 4458(W) of 2006 before this High Court, praying for releasing the subsistence allowance and other arrear dues and this Court by an order dated 27.10.2006 was pleased to dispose of the Writ Petition with certain observations. In terms of the aforesaid order dated 27.10.2006, the school authority started paying the subsistence allowance for the husband of the opposite party herein. Subsequently the Director of school education by a letter dated 24.12.2008 informed the secretary of the said school that he did not approve the act of dismissal of the husband of the opposite party and also directed the school authority to reconsider the stage of punishment after observing a fresh procedure and after giving the incumbent concerned an opportunity of hearing.

7. Thereafter, the husband of the opposite party again preferred a Writ Application being WP No.22562 (W) Of 2012 before this High Court challenging the entire disciplinary proceeding including the order of suspension, wherein this High Court passed an interim order on 17.04.2013 directing the husband of the opposite party to resume his duties in respect

of the post of assistant teacher in the said school. Accordingly he joined in the said school and retired from his service on 31.01.2019. Said writ petition is still pending for disposal.

8. In the meantime, the husband of the opposite party had filed another writ petition being no. WPA 1194 of 2018 before this High Court with a prayer for releasing the subsistence allowance together with arrears and interest thereupon. One order was passed in the said writ application on 08.08.2023 wherein the respondent no. 3 was directed to consider the representation dated 08.12.2017 which was annexed with writ petition and filed on behalf of the writ petitioner upon issuing at least 7days prior hearing notice to the petitioner and respondent no. 4 and to pass a reasoned order in accordance with law after giving them an opportunity of hearing.

9. The writ petitioner/husband of the opposite party herein filed an intra Court Appeal being MAT no. 1830 of 2023 before a Division Bench of this Court, which court was pleased to dispose of the said appeal without interfering the aforesaid order passed by the Single Bench on 12.10.2023.

10. It is alleged by the petitioner herein that suppressing such vital aspect, the opposite party herein being the wife of the said writ petitioner had taken up an application under section 156(3) of the CrPC inter alia alleging that her husband who had been discharging his duties honestly, punctually and with full integrity had been behaved in a step motherly manner by the petitioner herein being the Head Master of the said institution and thereby initiated a disciplinary proceeding against her husband. It is alleged that the school authorities at the instance of the petitioner had unnecessarily delayed the release of the legitimate dues of the

husband of the opposite party in spite of dismissal of the Special Leave to Appeal preferred by the institution. The opposite party had faced serious difficulties owing to the act of the petitioners and recently the petitioner being the head of the institution had taken drastic steps against her husband by illegally and arbitrarily withholding the monthly salary from the month of March 2017 on the plea of non-resumption of normal duty. The husband of the opposite party suffered mental shock and trauma for which he could not impart best education.

11. Learned Magistrate observed that the opposite party could not make out a case of police investigation but he treated such application as a complaint and was pleased to take cognizance of the same vide impugned order dated 29.05.2017.

12. Learned counsel for the petitioner further submits that he has suffered grave injustice by being deprived of his post-retiral benefits solely due to the pendency of the instant proceeding, which is wholly misconceived and legally untenable. He argued that the complaint is nothing more than a collateral challenge to disciplinary measure taken by the school authorities over two decades ago, which have already been subjected to judicial scrutiny upto the Supreme Court. The Court below despite noting that no material existed to justify police action, has mechanically taken cognizance under section 500 of the IPC, without appreciating that the allegations relate solely to administrative suspension and disciplinary enquiry which are governed by service jurisprudence. No defamatory imputation against the husband of the opposite party is evident on record. The allegations are confined to

alleged harassment and mental trauma arising from suspension, which cannot in law amount to defamation.

13. He further argued that the complaint is filed by the wife of the concerned teacher, which is not permissible under section 199 of the Code. If somebody aggrieved by an action of the school authority, it does not constitute an offence of defamation as it squarely falls within the exception to the section 499 of the IPC. The decision to initiate disciplinary proceeding was a decision by the managing committee of the school. Even otherwise there was no malice of the petitioner in discharging his official duty.

14. He further argued that the sum and substance of the allegation revolve around the alleged actions undertaken by the petitioner during his tenure as a headmaster of a school where the opposite party's husband was employed. No sanction as contemplated under section 197 of CrPC has been obtained. Furthermore, Section 468 of the CrPC imposes a clear statutory bar on the Court from taking cognizance of offence after the lapse of the prescribed period of limitation. Therefore once the prescribed period has expired, the complaint is rendered legally untenable. Section 500 of the IPC prescribes a maximum punishment of 2 years imprisonment or fine or both and therefore under section 468(2)(c) of the CrPC, the limitation period for taking cognizance of such offence is 3 years from the date of alleged cause of action. He further pointed out that the summoning order passed by the Court below on 25.09.2017 is bereft of reasons and even if the prosecution story is accepted in its entirety, the allegations do not disclose the essential ingredients of section 500 of the IPC. Therefore the petitioner has prayed for quashing of the impugned proceeding.

15. Mr, Thakur learned counsel for the opposite party opposed the prayer made by the petitioner and contended that since the beginning of his career the husband of the opposite party was dealt with by the petitioner herein at every stage till the date of his retirement and the petitioner tried to put him financially crippled. The school authority under the leadership of the petitioner initiated illegal disciplinary proceeding placing the husband of the opposite party under suspension and ultimately he was dismissed from service. The petitioner intentionally made wrong calculation in the service benefit as also in the pensionary benefit of the husband of the opposite party. In this way the petitioner herein tried to make the husband of the opposite party financially crippled. When the husband of the opposite party applied for a personal loan, the petitioner tried his best so that the husband of the opposite party could not get that financial assistance. Even the petitioner without taking any instruction from the husband of the petitioner, started deducting the EMI of the said loan directly from his salary.

16. In reply to the petitioners argument that sanction under section 197 of Cr.P.C was not taken before taking cognizance, learned counsel for the opposite party submits that the complaint was lodged by the wife of the said assistant teacher against the petitioner as her individual entity and therefore sanction is not required to file the said complaint. Infact the commission of offence as alleged was committed by the petitioner herein not only against the husband of the opposite party but also against all the family members of the opposite party and therefore it is maintainable as framed by the opposite party.

17. It is further argued on behalf of the opposite party that the complainant being an aggrieved person within the meaning and ambit of section 499 of the IPC has validly instituted the present complaint against the petitioner. Referring the judgment of ***John Thomas Vs. Dr. K Jagadeeshan, AIR 2001 SC 2651*** he argued that the collocation of the words 'by some persons aggrieved' definitely indicates that the complaint need not necessarily be lodged by the defamed person himself. Whether the complaint has reason to feel hurt on account of the illegal actions taken by the petitioner is matter to be determined by the Court depending upon the facts of each case during trial.

18. He further argued that at the stage of exercising inherent power under section 482 Cr.P.C, this Court ought not conduct a mini trial or evaluate disputed questions of fact. Deciding the locus standi of the complaint at this preliminary stage, without trial may amount to pre mature adjudication. The issue of whether the complainant has locus standi in filing complaint under section 500 IPC is generally a matter to be determined after evidence is led and not ordinarily at this stage. In this context he also referred judgment in ***Subrmaniyam Swammy Vs. Union of India, (2016) 7 SCC 221.***

19. He further submits that it is a settled position of law that the exception to section 499 IPC are matters of defence and burden squarely lies upon the accused to establish that his case falls within the ambit of the claimed exception. The invocation of exception 8 and 9 enumerated under section 499 of the IPC requires the appreciation of evidence to be laid down by the accused at trial who claims to be falling under the same and in this

context he relied upon the judgment of ***Harbajhan Singh Vs. State of Punjab, 1965 SCR (3) 235.***

20. In this context he further argued that exception 8 and 9 requires prove of good faith, due care and attention and either lawful authority under exception 8 or protection of interest/public good under exception 9. The expression “good faith” under section 52 IPC necessarily involves a factual inquiry into whether the accused acted with due care and attention. Such determination requires appreciation of evidence, examination of surrounding circumstances and testing of the accused persons conduct through cross examination. While the accused may succeed at trial by establishing his defence on a preponderance of probability, such evaluation is impermissible at the quashing stage. As it has been reiterated by the Apex Court in catena of judgements that the High Court must exercise such power with great circumspection and restraint, the inherent power is not intended to stifle a legitimate prosecution nor to conduct a roving inquiry into disputed questions of fact. Quashing of the complaint is warranted only where the complaint is bereft of basic facts, which are absolutely necessary for making out the offence.

21. In reply to petitioners argument that the complaint filed before learned magistrate is vague, absurd or misconceived, learned counsel for the opposite party submits that the complaint clearly discloses specific allegations and material particulars sufficient to warrant consideration by the learned magistrate. The learned magistrate has taken cognizance only after due application of judicial mind and upon being satisfied that a prima facie case is made out. A complaint is not required to reproduce every

incriminating material or verbatim statements or the exact words allegedly spoken or imitated. At the stage of taking cognizance or issuance of process, the court is only required to examine whether the complaint discloses the essential ingredients of the alleged offence and makes out a prima facie case. In this context he relied upon a judgment of Supreme Court in ***Balraj Khanna and Ors. Vs. Moti Ram*** reported in **AIR 1971 SC 1389**.

22. The contentions of the petitioners regarding the alleged delay in filing the present complaint are not sustainable. It is well settled that the question of limitation is a mixed question of fact and law, which necessarily requires appreciation of evidence and examination of relevant circumstances. Such an issue cannot be conclusively adjudicated at this preliminary stage while exercising its inherent jurisdiction. Even if the petitioners are aggrieved on the ground of limitation, they can raise such objection before the Trial Court in filing appropriate application seeking dismissal of the complaint on maintainability ground.

23. The petitioners themselves have approached this High Court after an inordinate and unexplained delay of nearly seven years from the institutions of the proceeding before the learned trial court. A petition under section 482 of the Code should not be invoked after such prolonged lapse of time, particularly when the petitioner has participated in the proceeding without demur and therefore, the instant petition is liable to be dismissed on that ground alone. The instant application under section 482 of the Code of Criminal procedure is wholly mis conceived devoid of merit and an abuse of process of law. The allegations disclosed in the complaint/FIR clearly constitute cognizable offence and prima facie make out a case against the

petitioner. Therefore the present application is liable to be dismissed in limine and the Trial Court may be directed to conduct full fledged trial at the earliest.

Decision

24. Before going further, let me reproduce the relevant portion of the impugned complaint

“18. That the president of the managing committee of the said institution and sub division officer, chandannagar sub division chandanagar Hooghly directed the Head-master to release the dues and outstanding amount to the husband of the complaint.

19. That in spite of that, the accused person as Head-master did not release the money to the husband of the complainant.

20. That the accused person as Head-master has done everything with a dishonest intention and put the husband of the complainant and his family into a deep financial hardship.

21. That during that crucial juncture the husband of the complainant was not in a position to get his son admitted into a reputed school due to financial hardship.

22. That the husband of the complainant could not give comfort to his family and he could not give better treatment of his mother and his mother-in-law because of financial crisis.

23. That the intention of the Head-master was to financially cripple the husband of the complainant and the said accused person as Head-master has done it by damaging his salary, which leads to damage of property.

24. That the husband of the complainant and his family are suffering from financial crisis due to the wrong and mala fide action taken against the salary of the husband of the complainant.

25. That due to the non-release of full salary and dishonestly deducting the salary without the due consent all the members of the family of the husband of the complainant suffered from mental shock and trauma for which he could not give the best education and treatment to his family members due to the cruel action on the part of the accused person as Head-master of the said institution.

26. That the mental condition of the husband of the complainant has gone to such an extent that the complainant apprehends that the husband of the complainant may commit suicide at any moment. The accused person as Head-master will be responsible if the husband of the complainant commits suicide as it is a clear provocation on the part of the accused person as Head-master.

27. That the complainant brought all the fact to the notice of the officer-in-charge Bhadreswar P.S. thereby requesting him to take necessary legal steps against the accused persons as Head –master of the said institution for the commission of punishable offences under the provisions of the Indian penal Code 1860 or any other law for the time being in force and investigate into the matter against the accused person as Head-master and take immediate steps by treating the said complaint as a first information report in accordance with law”

25. The complainant only deposed during initial deposition under section 200 of the Cr.P.C, wherein she has stated that she had filed the instant case against the petitioner with the allegation of causing mental torture and for damaging his reputation including his family. Hon'ble Apex Court directed for payment of the due salary and other benefits including interests to her husband but the accused person did not comply the order of the Hon'ble Court and forced her and her other family members to lead the life in starvation. The reputation of her husband and family members lowered down in the estimation of others and the petitioner did all these acts with a view to harass her husband and her family members intentionally and dishonestly with ulterior motive to defame them and therefore she wants the punishment of the petitioner.

26. In the above background of filing the complaint, it is clear that the acts were done by the petitioner, were done in accordance with the recommendation of the school committee and also in terms of the court's order. Therefore, if the aforesaid allegations made in the complaint as well as in the initial deposition are taken into consideration, it at best amount to counter allegations made in the course of judicial or quasi-judicial proceeding. A perusal of the complaint, it appears that the complainant is aggrieved as her husband suffered humiliation owing to the disciplinary action, taken by the committee when the present petitioner was the Head-master of the School.

27. The act of initiating disciplinary proceeding or making any recommendation with the same as head of the institution cannot by itself constitute an act of defamation. In order to justify an allegation under section 500 IPC, it is required that the allegations must satisfy requirement of section 499 IPC, as also the explanations appended thereto. It is thus required to be shown by the complainant who claimed herself as aggrieved person that the imputation which has allegedly caused harm to his reputation directly or indirectly lowered her husband's moral and intellectual character in the estimation of others, under explanation 4 of section 499. If the moral or intellectual character of the person concerned is not lowered in the estimation of others, simply making of imputation, if any, cannot per se lead to commission of offence of defamation.

28. In the instant case neither in the complaint nor in the initial deposition of the complainant, recorded on solemn affirmation, before the learned magistrate, she alleged that the reputation and/or moral or intellectual character of the opposite party no.2 or her husband was lowered in the estimation of any other person. The complainant had also failed to bring a single person as witness on her behalf during initial deposition in support of the imputation that her husband's moral or intellectual character has been lowered in the eyes of said person, due to continuance of the proceedings conducted by the school authority or for any other reason. It is thus apparent that the complainant has failed to make out a case within the parameters as provided under section 499 IPC. The opposite party simply ventilated the alleged harassment or inaction on the part of the petitioner, without having any element of defamation.

29. The next question that arises for consideration is whether reading the complaint and the initial deposition, can it be said that prima facie case exist for trial or exception seventh/eighth/ninth to section 499 applies and consequently in such a case, calling upon the accused to face trial would be a travesty of justice. The gravamen of the allegations in the complaint petition is that the petitioner had intentionally taken some actions against her husband, which resulted withholding the payment of due salary and other benefits along with interest, inspite of specific direction of the court and thereby forced her and other family members under the threat of starvation and also the reputation of her husband and family members lowered down in the estimation of others, which the accused did with a view to harass and defame her and her family members intentionally and dishonestly.

30. Exception 8 to section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person, with regard to the subject matter of accusation. The averment of the complaint clearly indicates that pursuant to the recommendation made by the school authority against the husband of the complainant, the proceedings were conducted and they found him guilty. Under such circumstances, the fact that the petitioner had made a recommendation for his termination as decided by the school authority or allegedly with the excuse of the pendency of the legal proceedings, petitioner had withheld his dues, are squarely covered by exception VIII to section 499 of the IPC. In the instant case the authority of the petitioner being head of the institution was never called in question. The background of the

complaint case makes it clear that the petitioner had not dealt with anything personally in discharge of his statutory or official duty. Even if for the sake of argument, if I take it for granted that there were certain imputations in the recommendation or in the objections filed before the court, that does not per se categorized as defamation, because every complaint is more or less having a touch of imputation and there is always a difference between defamation per se and implied defamation.

31. The petitioner acted in the capacity of a Headmaster of a school and apparently acted under the recommendation of school authorities. His authority also remains unchallenged and as such the exception in clause VII & IX of section 499 also squarely protects him. The decision to initiate disciplinary proceeding was a decision by the managing committee of the school. Even otherwise there was no malice and was an act in discharge of his duties.

32. The other aspect of the matter is, in the present case before initiating the proceeding or before taking cognizance, no sanction was also taken from the competent authority though the alleged action undertaken by the petitioner during his tenure was as a Head-master of a school, where husband of opposite party was employed.

33. A public servant is protected under section 197 of the Cr.P.C. if two conditions are satisfied (i) that the accused was a public servant who was removable from his officer only with sanction with State Government or the Central Government (ii) he must be accused of an alleged offence to have been committed by him while acting or purporting to act in the discharge of his official duties. It is equally true that no protection can be granted to the

public servant if the act complained of is not in connection with discharge of his duties or in exercise of his duty. In fact for invoking protection under section 197 of the Code, the accusation complained of must be such that the same cannot be separated from the discharge of official duty. In the instant case aforesaid background makes it quite clear that there was reasonable connection between the acts of the petitioner complained of with that of the discharge of his official duty and there is apparently nothing to show that he acted in excess of his duty. The mandatory character of the protection afforded to a public servant is brought out by the expression '*no court shall take cognizance of such offence except with the previous sanction*'. Therefore use of the words 'no' and 'shall' make it abundantly clear that the bar on exercise of power by the court to take cognizance of any offence is absolute and complete and therefore, very cognizance upon the instant offence is barred and the complaint cannot be taken notice of, without sanction.

34. Furthermore the petitioner has rightly challenged the wife's locus to file the complaint. Infact in the present case the complaint is filed in a representative capacity by the wife of the concerned teacher. Under section 199 of Cr.P.C no Court shall take cognizance of the offence, except upon a complaint made by the person aggrieved. I am not unmindful to the proposition of law that the words "persons aggrieved" do not only mean "person defamed" and definitely it has wider connotation but where the person defamed is an adult and a male who acted as a teacher of a school for a considerable period and is not incapacitated by physical infirmities or otherwise incapable of attending the court, no other person should be held

to be competent to make a complaint under section 500. When an architect of society whose duty as assistant teacher was to play a fundamental role in shaping minds, nurturing values and moulding the character of future generations has been allegedly defamed and when he is alive, his wife can hardly file the complaint, as she cannot be said to be aggrieved by the alleged defamation, caused to the assistant teacher, merely on the ground that she also suffered financial crisis due to action or non-action on the part of the petitioner.

35. The order summoning the petitioner is also a non-speaking order and is bad in law. Under section 204 of Cr.P.C., the discretion to issue process must be judicially exercised. The impugned order dated 25.09.2017 is bereft of reasons. Even if the prosecution story is accepted in its entirety the allegations do not disclose the essential ingredients of section 500 of IPC. The complaint suffers from improbabilities and a reasonable person cannot come to a conclusion that the complaint and the initial deposition constitutes, even prima facie, offence under section 500 of IPC. Therefore, continuance of instant proceeding any further would be mere abuse of the process of the court.

36. In view of above **CRR 213 of 2024** is allowed.

37. The impugned proceeding being CR 187 of 2017 under section 500 of IPC pending before Learned Judicial magistrate, 3rd court Chandan Nagar is hereby quashed.

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.)