

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

APPELLATE SIDE

CRR No. 2236 of 2023

**Shantanu Moitra and Anr.
Vs.
The State of West Bengal and Anr.**

Before: The Hon'ble Justice Apurba Sinha Ray

For the Petitioners	: Mr. Jayanta Narayan Chatterjee, Senior Adv. Ms. Munmun Tewary, Adv. Mrs. Sohini Adhikary, Adv. Mr. Supreem Naskar, Adv. Ms. Jayashree Paria, Adv. Ms. Pritha Sinha, Adv. Mr. Gourav Sarkar, Adv. Ms. Arpita Biswas, Adv.
For the opposite party no. 2	: Mr. Smrajit Basu, Adv. Mr. Tirtharaj Ghosal, Adv.
For the State of West Bengal	: Mr. Madhu Sudan Sur, Adv. Mr. Manoranjan Mahata, Adv.
CAV On	: 10.04.2026
Judgment On	: 05.05.2026

Apurba Sinha Ray, J. :-

1. The backdrop of the present revisional application is encapsulated in the following paras.
2. The private respondent no. 2 Smt. Ankana Moitra has lodged a written complaint to the Inspector-in-charge, Bidhannagar South Police Station on 14.12.2021 around 14.25 hrs. alleging, inter alia, that a Hindu Marriage between herself and Shantanu Moitra took place on

21.04.2005 and after her marriage she went to her matrimonial home at FD Block, Sector -3, Salt Lake, North 24 Parganas and out of the said wedlock one male child namely master Sannibh Moitra was born on 26.01.2012 and after his birth her husband and in-laws started different types of torture upon her which was increasing day by day.

The FIR has also contained the following averments.

“That suddenly on 26.11.2021, when I came back from my work, I saw that nobody of my family members is in the aforesaid address and except my room all other rooms of the said flats were locked. Thereafter I searched here and there and asked every one of the aforesaid complex. But no result. Thereafter I called my husband and mother-in-law in their mobile phones. But they did not pick up my phone calls. My husband with the help of my in-laws specifically my mother-in-law, they took away my son in my absence to create mental trauma upon me and after carefully searching I saw that some cash worth approximately Rs.91,000/- (Rupees Ninety One Thousand only and my daily wear jewellery is missing from my almirah. That after this incident and finding no other alternatives I went to your Police Station on 26.11.2021 but your police personnel did not help me and refused to take any action. Thereafter finding no other alternatives I compelled to write my grievances to you for taking appropriate necessary steps towards my grievances.”

- 3.** After receipt of the said complaint Bidhannagar police station case no. 320 of 2021 dated 14.12.2021 under Sections 498 A, 323, 34 of the IPC, 3 and 4 of the Dowry Prohibition Act, 1961 was initiated and after completion of the investigation the present revisionists being the husband and mother-in-law of the de-facto complainant were chargesheeted under Section 498 A/323/ 34 of the IPC.
- 4.** After submission of charge sheet, and also after obtaining bail order from the learned Court, the revisionists had filed a discharge prayer

before the learned Trial Court and the learned Trial Judge by his order dated 08.06.2023 refused to allow the prayer for discharge of the accused as stated above. Being aggrieved with such order, the revisionists preferred this application under Section 482 and 401 of Cr.P.C. praying that the order dated 08.06.2023 passed in GR case No. 1522 of 2021 in connection with Bidhannagar South police Station case no. 320 dated 14.12.2021 under Section 498-A/323 read with section 34 of IPC and the chargesheet being no. 3 of 2022 dated 28.01.2022 be set aside. It is also prayed that the relevant case and its chargesheet be quashed since no material evidence is collected by the concerned IO against the present revisionists.

- 5.** Mr. Jayanta Narayan Chatterjee, learned Senior counsel has submitted that since the year 2014 the petitioner No. 1 and the opposite party no. 2 started residing separately under the same roof. Although there was no dispute till birth of the child, which took place on 26.01.2012, the petitioner no. 1 was compelled to lodge a complaint on 25.11.2021 with the Inspector-in-charge of Bidhannagar South Police Station against the opposite party no. 2 thereby narrating the incidents of constant torture inflicted upon him, his aged mother and his child including the incidents of physical assault and repeated threats at the instance of the opposite party no. 2. Unable to bear such torture, the petitioner nos. 1 and 2 alongwith child left their ancestral house on 26.11.2021 and started residing separately. Although, the opposite party no. 2 filed a written complaint on 14.12.2021 against the petitioners, the ingredients of offences punishable under Sections 498 A/ 323/ 34 of

IPC read with Section 3 and 4 of the Dowry Prohibition Act are absent. The FIR shows that it contained general and omnibus allegations against the petitioners. Although in the FIR she has stated that some cash worth approximately Rs. 91,000/- was missing from her Almirah, subsequently she disclosed that the said alleged amount was found in her own Almirah. The FIR has failed to disclose any ingredient of offences punishable under Sections 498 A/ 323/ 34 of the IPC or under Sections 3 and 4 of the Dowry Prohibition Act.

- 6.** The learned Counsel has also pointed out that while allowing the prayer for bail of the petitioners on 31st December, 2021 the learned Judge was pleased to record that there was no specific allegation against the petitioners made in the FIR and all the disputes between the parties generated over the issue of child. The opposite party no. 2, wife filed an application dated 2nd February, 2022 seeking repatriation of child but the learned Additional District Judge, 13th Court, South 24 Pgs. at Alipore was pleased to refuse such prayer on the grounds, inter alia, that the child was not willing to go to his mother. The Statement of the witnesses recorded under Section 161 Cr.P.C would show that the wife, opposite party no. 2 was never subjected to any kind of torture either physical or mental at the hands of the petitioners. It is further contended that the petitioners never made any demand for dowry. A private psychologist had made a psychological assessment which also shows how the child was tortured by his mother. The learned Counsel has referred to the following judgments in support of his contention.

- i. **Madhavrao Jiwajirao Scindia and Others v. Sambhajirao Chandrojirao Angre and Others** reported in (1988) 1 SCC 692 - Paragraph 7. (Page 13 to 17).
- ii. **Mahmood Ali and Others v. State of Uttar Pradesh and Others** reported in (2023) 15 SCC 488 - Paragraph 11,12,13,14 and 15. (Page 18 to 29)
- iii. **P.V.Krishnabhat and Anr. v. State of Karnataka and Ors.** reported in 2025 SCC Online SC 484 - Paragraph 16 and 17. (Page - 30 to 34)
- iv. **Preeti Gupta and Anr. v. State of Jharkhand and Anr.** reported in (2010) 7 SCC 667 - Paragraph 13-18, 21, 23-24, 26-28, 30-39. (Page- 35 to 45)
- v. **State of Karnataka v. L.Muniswamy and Ors.** reported in (1977) 2 SCC 699 - Paragraph 7,8 and 10. (Page-46to 52)
- vi. **Kahkashan Kausar alias Sonam and Ors. State of Bihar and Ors.** reported in (2022) 6 SCC 599 Paragraph 10-16, 17,18,21 and 22. (Page-53 to 62)
- vii. **Inder Mohan Goswami and Anr. v. State of Uttaranchal and Ors.** reported in (2007) 12 SCC 1-Paragraph 23-26, 28,31,46,60. (Page -63 to 80)
- viii. **Ghanshyam Soni v. State (Govt. of NCT of Delhi) and Anr.** reported in 2025 SCC Online SC 1301 - Paragraph 10. (Page 81 to 91)
- ix. **Digambar and Anr. v. State of Maharashtra and Anr.** reported in (2024) 12 S.C.R. 1533 - Paragraph 19,20, 21-23, 29,30, 32-35. Page 92 to 111)
- x. **Dara Laxmi Narayana and Ors. v. State of Telangana and Anr.** reported in (2025) 3 SCC 735 - Paragraph 20,27,34,35. (Page 112 to 124)

7. Mr. Madhusudhan Sur, the learned Counsel appearing for the State of West Bengal has submitted that the order dated 08.06.2023 was passed by the learned Trial Judge after considering the materials on record and there are sufficient incriminating materials against the present petitioners and as such instant revisional application has no

merits and therefore, the same should be rejected. He has further pointed out that the revisional application with multiple prayers is not permissible under law.

8. The learned Counsel Mr. Smarajit Basu has submitted that the psychological assessment report of the child cannot be relied upon. Firstly, the same was done without intimation to the wife being the opposite party no. 2 herein and further the said assessment was done by a private institution. On 08.10.2021 a divorce suit was filed by the husband against the opposite party no. 2 and while he filed the divorce suit he was living under the same roof with the wife being the opposite party no. 2. On 25.11.2021 a general diary was filed by the petitioner/husband against the opposite party no. 2 and the petitioner/husband and his mother left the house with the child on 26.11.2021 without intimating the wife who is the biological mother of the said Child. On 26.11.2021 after returning home the wife found that the husband had taken away the son and left the house abandoning her. She went to the police station to file a complaint but was refused by the officer of the police station. Although an intimation letter was given by the husband's lawyer to the opposite party no. 2, no date was mentioned in the said letter nor there was anything to show with the postal tracking system that such a letter was actually sent to the opposite party no. 2/ wife. The said letter was sent to the maternal house of the wife where she does not reside. Another complaint was submitted before the Bidhannagar police station by the wife and the same was finally registered on 14.12.2021. On 28.01.2022 chargesheet

was filed and a discharge application filed by the petitioner was rejected by the learned Trial Judge stating that there are enough materials on record by way of chargesheet and statements recorded under Section 161 Cr.P.C. for framing charges against the revisionists.

- 9.** Mr. Basu, has further submitted that during pendency of multiple cases amongst the parties a contempt application was filed by the wife opposite party No. 2 against the petitioner husband in CAN 1140 of 2024. In CO 2644 of 2023 with CO 816 of 2023 where this Hon'ble Court on 07.08.2024 observed that: "Upon appreciation of the pleadings in this contempt application, this Court finds that the bare minimum responsibility to be discharged by the father, by allowing the mother at least to watch the child from a distance and to furnish information with regard to the child's health, education, progress, etc., is missing, despite order of this Court."

This Hon'ble Court was further pleased to observe that:

"The documents annexed to this application in my prima facie, opinion amount to disobedience of the order of this Court. The blatant disrespect which the father has shown to the authority of law and the majesty of the Court is unacceptable. In the aforesaid application a medical Board was constituted by Director & Head, Department of Psychiatry (IOP-COE), IPGME&R, SSKM Hospital to assess the child and to what extent he is terrified of the mother (as claimed by the petitioner husband. The report was filed before The Hon'ble Court on 18.12.2024 and no material was found as claimed by the petitioner that the child has any animosity against the mother. Hence, the assessment

done by the husband petitioner through a private institution has to be rendered false/misleading and baseless.

10. It is further submitted that the above chronology unmistakably establishes a continuous and deliberate course of conduct amounting to mental torture and cruelty inflicted upon the wife, Opposite Party No.2. The petitioner husband's acts of secretly subjecting the minor child to psychological assessment without the mother's knowledge, forcibly removing the child from her custody, abandoning the wife without notice, denying her access to and information about her own child despite subsisting judicial orders, and repeatedly misusing legal proceedings, have caused severe mental agony, trauma, and emotional devastation to the wife. Such conduct squarely falls within the ambit of mental cruelty and mental torture as contemplated under Section 498A of the Indian Penal Code. The Investigating Agency, upon due investigation, found sufficient prima facie materials to proceed, and the Learned Trial Court has rightly rejected the Discharge Application after recording satisfaction regarding the existence of materials warranting framing of charge after considering statements of witnesses under section 161 Cr.P.C. which will show that there was some dispute between the husband and wife regularly. The present revisional application is therefore wholly devoid of merit, constitutes an abuse of the process of law, seeks to prematurely terminate a lawful prosecution, and is liable to be dismissed, in the interest of justice.

11. Mr. Basu has referred to the judgment of **Muskan vs. Ishaan Khan (Sataniya) and Ors.** reported in **2025 SCC Online SC 2355** in support of his contention that FIR cannot be treated as an encyclopedia of a case. He has further referred to **Rupali Debi vs. State of UP** reported in **(2019) 5 SCC 384** in support of his contention that mental cruelty as envisaged under Section 498 A in explanation (a) is a continuing offence. Moreover, according to him when a child is taken away from the custody of his mother without being giving her intimation to that effect, mental cruelty under Section 498 A can be said to be well established in view of the judgments of **Rekha and Others Versus State of Maharashtra, through : Police Inspector, Police Station and Another** reported in **2024 SCC OnLine Bom 3769**, **Bhaskar Lal Sharma v. Monica** reported in **(2014) 3 SCC 383**, **K.V. Prakash Babu v. State of Karnataka** reported in **(2017) 11 SCC 176** , **Mohd. Hoshan and another v. State of A.P.** reported in **(2002) 7 SCC 414**. The learned counsel for the revisionists Mr. Chatterjee, in his reply, has submitted that the above decisions are not applicable in the factual matrix of the present case.

Court's view:-

12. Each case has to be judged on its own merits. No straight-jacket formula can be laid down in dealing with matrimonial litigation since the matrimonial disputes between the couples arise on various peculiar circumstances. From the above reported decisions we have found that provisions of Section 498-A of IPC have been enacted to protect the female folk of our society who used to go and stay in their matrimonial

homes, after the marriage was solemnised. Time and again the Hon'ble Supreme Court as well as different High Courts including ours have categorically stated that normal wear and tear in matrimonial disputes should not be given much weightages and also the Hon'ble Courts requested the counsel of the parties to take a reasonable and prudent stand to see that the social fabric of families are not disturbed. In spite of such holistic suggestions, the matrimonial litigations are increasing by leaps and bounds.

13. Section 498 A of IPC is quoted herein below:

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.— For the purpose of this section, “cruelty” means—(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman;

or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

14. From the above provisions of law and also in view of the judgment of

Bhaskar Lal Sharma (supra) the Hon'ble Apex Court has laid down in

Para 10 of the said judgment as follows:

“10. *We disagree. “Cruelty” as defined in the Explanation to Section 498-A of the Penal Code has a twofold meaning. The contentions of Shri Sharan do not deal with the Explanation (a) and is exclusively confined to the meaning dealt with by Explanation (b). Under Explanation (a) conduct which is likely to cause injury or danger to life, limb or health (mental or*

physical) would come within the meaning of the expression “cruelty”. While instances of physical torture would be plainly evident from the pleadings, conduct which has caused or is likely to cause mental injury would be far more subtle. Having given our anxious consideration to the averments made in the complaint petition, we are of the view that the statements made in the relevant paragraphs of the complaint can be understood as containing allegations of mental cruelty to the complainant. The complaint, therefore, cannot be rejected at the threshold.”

15. The Hon’ble Apex Court has further laid down the scope of explanation (a) under Section 498-A of the Code in **K.V. Prakash Babu (Supra)** in Para 10, 11 and 12 of the said decisions.

“10. The said provision came up for consideration in Girdhar Shankar Tawade v. State of Maharashtra [Girdhar Shankar Tawade v. State of Maharashtra, (2002) 5 SCC 177 : 2002 SCC (Cri) 971] , where the Court dwelling upon the scope and purport of Section 498-A IPC has held thus: (SCC p. 180, para 3)

“3. The basic purport of the statutory provision is to avoid “cruelty” which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word “cruelty” as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide, or (ii) to cause grave injury or, (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury: whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of “cruelty” in terms of Section 498-A.”
(emphasis supplied)

11. *In Gurnaib Singh v. State of Punjab [Gurnaib Singh v. State of Punjab, (2013) 7 SCC 108 : (2013) 3 SCC (Cri) 49] , while dwelling upon the concept of “cruelty” enshrined under Section 498-A the Court has opined thus: (SCC pp. 118-19, para 18)*

“18. ... Clause (a) of the Explanation to the aforesaid provision defines “cruelty” to mean “any wilful conduct which is of such a nature as is likely to drive the woman to commit

suicide". Clause (b) of the Explanation pertains to unlawful demand. Clause (a) can take in its ambit mental cruelty."

***12.** The aforesaid analysis of the provision clearly spells how coercive harassment can have the attributes of cruelty that would meet the criterion as conceived of under Section 498-A IPC. Thus, the emphasis is on any wilful conduct which is of such a nature that is likely to drive the woman to commit suicide. The mental cruelty which is engraved in the first limb of Section 498-A IPC has nothing to do with the demand of dowry. It is associated with mental cruelty that can drive a woman to commit suicide and dependent upon the conduct of the person concerned."*

16. The judgment of **Mohd. Hoshan and another (supra)** has also dealt with the issue of mental cruelty under Section 498 A of IPC. In the said case the Hon'ble Court has been pleased to hold that continuous taunting or teasing of the deceased by the appellants on one ground or the other amounted to mental cruelty drawing her to end her life.

17. In the case at hand if we peruse the FIR, we shall find that allegation of torture against the revisionists are appeared to be general and omnibus. No specific averment was made by the de-facto complainant as to the specific role played by each of the revisionists. If we consider the statements of the neighbours recorded under Section 161 Cr.P.C., we shall find that no neighbours saw the revisionists to inflict physical or mental torture upon the de-facto complainant. What they have stated is that they have heard that de-facto complainant was subjected to physical and mental torture. The I.O. in his charge sheet has recorded that he asked the de-facto complainant to produce any documents but the de-facto complainant narrated to her that neither she was treated in any hospital nor was examined by any private practitioner. Therefore, as the neighbours were not eye-witnesses to the

alleged incident of physical torture it would be very difficult for the prosecution to prove such alleged physical torture upon the de-facto complainant, particularly when the FIR and the statement of the de-facto complainant under section 161 Cr.P.C shows that she herself did not make any allegation of physical torture.

- 18.** The judgment reported in **Madhavrao Jiwajirao Scindia (supra)** has been pleased to lay down in **Paragraph 7** as hereunder.

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

- 19.** The sister of the de-facto complainant who was also examined under Section 161 Cr.P.C. did not state before the Police that she saw any incident of physical or mental torture upon the de-facto complainant at the hands of the revisionists. However, it appears from the FIR that as the husband of the de-facto complainant and his mother took away her son from her custody without any intimation to her, this had caused a serious mental trauma and for which she had brought the criminal complaint against the revisionists. The learned Counsel for the wife/private opposite party no. 2 has also harped on the point that taking away her son from her custody without giving her any intimation

to that effect has serious repercussions on her mind and therefore, the case has squarely come within the ambit of explanation (a) under Section 498-A IPC.

20. It is undoubtedly true that if a son is taken away from the custody of the mother it makes a serious repercussion in the mind of a loving mother. But as I have already mentioned that each case has to be judged by its own merits, we have to consider the factual matrix of this case.

21. Admittedly, the petitioner No. 1 and the Opposite party no. 2 were married on 21.04.2005 and relationship between the couple was good and cordial. It is also admitted that the child was born on 26.01.2012. According to both parties after the birth of the child, disputes arose between the parties on several matters. Ultimately, they started living separately although under the same roof.

22. The de-facto complainant/wife lodged a written complaint on 14.12.2021 only when she found that her son was taken away without giving any information to her by the revisionists. The allegation and counter allegation show that the de-facto complainant/wife used to inflict torture upon the minor child on various manners and as a result of which, according to the revisionists, the well-being of the minor child was at stake. It is also alleged that the child was not given liberty to mix up with kids of his age and was not even allowed to go to the veranda of the flat nor even allowed to learn cycling and so on. It is also the allegation that torture upon child was so much so that child expressed his desire to commit suicide. The report of the psychologist of

the private institution was challenged from the side of the wife-de-facto complainant as manufactured at the instance of the husband/petitioner no. 1. The entire allegation levelled against the de-facto complainant/wife was seriously challenged from the side of the de-facto complainant by contending that the petitioner no. 1 made such false, manufactured documents to paint out a negative image of the de-facto complainant.

23. Needless to mention, after the birth of the child the revisionists and the de-facto complainant remained under the same roof although in separate rooms and this continued till 26.11.2021. It is not a normal situation between a couple. Therefore, the rupture in relation was already there. But in spite of such relation they were able to stay under the same roof although separately. Therefore, during this long period the alleged mental cruelty, if any, did not persuade the wife to lodge a complaint under section 498-A of IPC. Only when the son was taken elsewhere without proper intimation to her, the de-facto complainant has raised the allegation that she was under tremendous mental cruelty in view of taking away her son. If that be the reason for mental cruelty inflicted upon the wife/de-facto complainant, let us see as to why such action was taken by the husband being petitioner no. 1. According to him, the son was under tremendous mental torture and such mental torture was so much so that the son expressed his desire to commit suicide. These peculiar circumstances allow this Court to balance the mental cruelty as alleged by the wife/opposite party no. 2 with the welfare of the child Sannibh Moitra. There are materials on

record that Sannibh Moitra was not only examined by a psychologist of a private medical institution but he was also examined by an Additional District and Sessions Judge in his chamber.

24. From the record it transpires that there was an application in Misc Case No. 331 of 2021 dated 24.03.2022 before the learned Additional District and Sessions Judge, 13th Court, Alipore, South 24 Parganas, at the instance of the OP no. 2/ wife, which was disposed of on following reasons:

“Today is fixed for passing order in respect of the application dated 02.02.2022, being filed by the respondent/wife seeking repatriation of the child namely Sannibh Moitra to her own house. Both sides were heard.

It was submitted on behalf of the respondent/wife that the said child is aged about 9 years and is a student of Class-V at Narayana School, New Town. It has been alleged that on 26.11.2021, while the said child was having his on-line classes of the school she went out to attend her duty a Confidential Secretary. When she returned home at around 9 O'clock she found the door to be unlocked and she found none of the inmates, namely the petitioner /husband, her mother-in-law and the said minor child in the said flat. She made multiple calls to her husband and mother-in-law, but those were left unattended. Now she alleges that she does not know where the minor has been taken by the petitioner and his mother. The police did not accept any complaint. She further stated that the said child should be repatriated to his own house and in the company of the mother.

The petition vehemently opposed by the petitioner/husband.

His Ld. Advocate submitted that the said child is living under trauma because of torture by the mother and the mother is in the habit of beating him up over trifle matters.

Having considered the averments made in the instant application and the rival contentions this court preferred to talk to the child himself. Since the best interest of the child should always be looked into by the court. I thought that such interaction will be of some help for this court to decide the matter in a proper manner.”

The child, namely Sannibh Moitra appeared before me in my chamber and during interactions it appeared to me that he is quite intelligent enough to give rational answers to various questions. He expressed before me, that all that he wanted was mental peace, which was non-existent in his house, as his mother used to rebuke and assault him on simplest of matters without any rhyme and reasons at all. When I asked him to go to his mother, the child started shivering and hides himself beneath the table. Further he requested me to not to send him back to his mother because he fears that he will again be beaten up by her. He further stated that he is quite happy in the company of his father and requested me repeatedly not to send him back to his mother.

The court is not oblivious of the fact, that the mother is also a natural guardian and the child of such a tender age needs his mother's most than anything else. A mother is put above the role and status of the father, because she knows the mental needs of the child. Having said so this court should not loose sight of the fact that a child, who is unwilling to go back to his mother and who keeps on shivering like anything whenever his mother was talked about, cannot be forced to live with his mother against his will. If the court forces him to do so it is likely to cause a heavy dent and scars on his mind. The scars of childhood sometimes do not fade with the changing time. A body grows into a man, although the scars remain forever. Therefore, the psychological and mental health of the child should not be given a go bye and this court having considered all the facts and circumstances meticulously is of the opinion that in the present circumstances the prayer of the respondent/wife cannot be allowed and the same stands rejected.

To 18.05.2022 for filing W.O in the misc case by O.P.”

25. From the above observations of the learned Additional District Judge, we have found that the learned judge has personally talked with the child and the child had expressed his desire not to be with his mother. This order was challenged in High court and the record further shows that the Hon'ble High Court had initially engaged one Receiver for facilitating meetings between the child and the mother, but the Receiver

reported that the child was not inclined to meet the mother. Subsequently, again one Special officer was appointed by the High Court in CO 2644 of 2023 with CO 816 of 2023 (Ankana Moitra vs. Shantanu Moitra) for monitoring the interaction between the mother and the child at Salt Lake City Centre. In its order dated March 20, 2024 the Hon'ble Co-ordinate Bench considered the report submitted by the Special Officer which is also against the opposite party no. 2 as the child did not want to stay with his mother. Therefore, even if we did not give much weightage to the report of the psychologist of the private medical institution, we have found that this case is singularly different from the other cases. In this case, the child is not willing to stay with his mother. Needless to mention that the children are regarded as **"Supremely important assets of our Country"** in National Policy for Children in 1974 and subsequent National Policies for Children including National Charter For Children, 2003, National Policy for Children 2013, and it is further true that each child has an universally recognised right to be grown up in a conducive atmosphere commensurate to his age, health etc., free from any kind of torture or exploitation. We cannot disregard this valuable right of the child, Sanniv. The judgments cited from the side of the opposite party no.2 have dealt with the mental cruelty of the victim-wife on different scores.

26. In Rekha and others (supra), the allegation was that the victim/wife had a daughter from the marriage with Rabi Wagmare and the child was aged about 2 years on the date of lodging the FIR. In that case, the

victim was expelled from her matrimonial house and further she was not allowed to take her daughter along with her. This was certainly a serious mental cruelty exerted upon a loving mother, but so far as the case at hand it is found that the child is not willing to go with his mother. If the father to save his child and to ensure his welfare and wellbeing by taking him away from the custody of the de-facto complainant we cannot say that such separation of the child from his mother has no basis and further as I have already mentioned that welfare and well-being of the child is of paramount interest not only for his parents but also for the judicial institutions which are duty bound to protect the interest and welfare of a child. Accordingly, I have found that there are certain reasonable basis for removing the child from the custody of the Opposite party no. 2 and as such, such action on the part of the Petitioner no. 1 cannot be said to have inflicted actionable mental cruelty since, in my view, the interest of the child should be given much priority against the alleged claim of mental cruelty of the mother. The case law of **Bhaskar Lal Sharma (supra)** does not disclose any fact akin to the facts of the present case and this court is not sure whether the said case law is applicable to the factual matrix of the present case since a difference in factual aspect may place the case at a different pedestal altogether from the cited judgement. Further, the case law of **K.V.Prakash Babu (supra)** has dealt with the issue whether extramarital affairs of the husband can be considered as the basis of mental cruelty of the wife under section 498-A of the Code or not. In **Mohd. Hoshan, A.P. and another (supra)**, the Hon'ble Apex Court held

that the continuous taunting or teasing by the appellants on one ground or the other amounted to mental cruelty drawing her to end her life. In the present case the facts are altogether different.

27. The judgments referred to by the learned counsel for the revisionists have been taken into consideration. The judgments of **Madhavrao Jiwajirao Scindia and Others (supra)**, **Mahmood Ali and Others (supra)** have laid down that the factual matrix in the FIR are to be taken into consideration before quashing the same. If the content of the FIR does not disclose a prima facie case the said FIR can be quashed.

28. The case at hand shows that there is no allegation of physical torture even in the statement of the opposite party no. 2 recorded under Section 161 Cr.P.C. did not disclose in her F.I.R that she was physically tortured. Her only allegation was that she was under tremendous trauma after her son was taken away without giving any information to her. I have already discussed that we have to give much weightage and priority to the interests of the child and his well-being, and even if there was any mental trauma for not having the society of the child, the same cannot be given much weightage and the de-facto complainant cannot be encouraged to file FIR on that ground alone. The learned counsel Mr. Basu has referred to a report of the Medical Board constituted by Director & Head, Department of Psychiatry (IOP-COE), IPGME&R, SSKM Hospital It is also pertinent to mention here that although in the FIR she had alleged that her cash and jewellerys were taken away but

subsequently it was revealed that such articles were found by the de-facto complainant in her Almirah. Therefore, it appears that the de-facto complainant has made unsubstantiated allegations against the revisionists. The statement of the witnesses recorded under Section 161 Cr.P.C. shows that they have no personal idea regarding alleged torture upon the de-facto complainant and their evidence cannot be said to be a direct piece of evidence. Therefore, I have found that there is a bleak chance of success in the said prosecution case. Moreover I do not find any serious allegation against the petitioner no.2 who is aged about more than 84 years.

29. However, it appears that custody application is pending before the appropriate forum, and the opposite party no.2 herein can certainly approach the learned Judge in the relevant forum, and if she so approaches, the Learned Judge shall dispose of the said application in accordance with law without being influenced by any of the of the observations made by this Court. Needless to mention they are made only for the purpose of disposing of the present revisional application.

30. In view of the above I find that allowing to continue the proceedings being G.R. Case no. 1522 of 2021 in the Trial Court would be a sheer abuse of process of Court and as such I hereby quash the FIR being no. 320/21 dated 14.12.2021 and the connected chargesheet being no. 03 of 2022 dated 28.01.2022.

- 31.** In view of the above findings the order dated 08.06.2023 is hereby set aside. **CRR 2236 of 2023** is allowed on contest. No order as to costs.
- 32.** Connected applications, if any, are disposed of. Interim order stands vacated.
- 33.** Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Apurba Sinha Ray, J.)