

10.04.2026
Item No.1
Ct. No. 34
nb

CRR 2412 of 2023

In the matter of: **Arindam Mukherjee.**

..... petitioner.

Mr. Milon Mukherjee, Sr. Adv,
Mr. Sanat Kumar Das,
Mr. Sujan Chatterjee,
Mr. Rohan Bavishi,
.....For the Petitioner
Mr. Debasish Roy, Ld. P.P.,
Mr. Saryati Dutta,
Ms. Kanchan Roy.
..... for the State
Mr. Ranojoy Chatterjee,
..... for the Opposite Party No.2.

1. This revisional application has been filed for quashing of the proceeding in connection with the G.R case no.7750 of 2021 arising out Dum Dum Police Station case no.983 of 2021 dated 02.9.2021 under Section 498A/34 of the Indian Penal Code, read with Section 3/4 of the Dowry Prohibition Act presently pending before the Learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas.

2. The fact of the case in a nutshell is that the opposite party no.2 herein is the wife of the cousin brother from his maternal side. The opposite party no.2 instituted a proceedings in the month of July 2019 under Sections 498A/406 of the IPC against her husband and other in-laws including sister-in-law, mother-in-law. Such proceeding was ended up in charge sheet no.712 of

2019 dated 26.11.2019 under Section 498A of the IPC against the six of the above named accused persons out of them three were not sent up for trial and the same is still pending for proper adjudication. The present petitioner suddenly came to know from his cousin brother that another criminal case has been initiated by the opposite party no.2 against the present petitioner under Section 498A of the IPC read with Section 3/4 of the Dowry Prohibition Act with false and concocted story. She alleged in the complaint how she was subjected to mental and physical torture over demand of dowry by her husband and in-laws and she was driven out of her matrimonial home on several occasions. The husband thereafter called for a settlement and asked the opposite party no.2 to visit her matrimonial home for discussion and when she went to her matrimonial home on August 30, 2021 she was abused by her husband and her brother-in-law namely Sudip Mukherjee and was threatened of dire consequences. She further alleged that the accused persons threatened her to hand over the flat where she was residing with her husband and also to withdraw the pending cases against her husband. The specific allegation made against this petitioner by the opposite party no. 2 that the petitioner threatened her through mobile phone of her husband to file false matrimonial suit against her again and again by her husband if she do not transfer the ownership of her parent's flat to her husband. .She further alleged that on August 30, 2021, she was again driven

out from her matrimonial house by the husband and other in laws and findings no other alternatives, she was forced to stay with her ailing widow mother.

3. With regard to the aforesaid complaint, the investigating agency on completion of investigation submitted the charge sheet under Section 498A/34 of the IPC read with section 3/4 of the Dowry Prohibition Act against the petitioner and her husband and one Sudip Mukherjee. Challenging the said proceeding, the petitioner has come before Court for quashing of the entire proceeding.

4. The learned Senior Advocate Mr. Milon Mukherjee argued that the instant proceeding is not maintainable as on the face of the written complaint as it does not reflect any material, which can constitute the offence under Section 498A or Section 3/4 of the Dowry Prohibition Act.

5. It is further submitted that the O.P. no.2 lodged a previous complaint implicating in-laws and husband excepting the present petitioner and the father-in-law and hence this petitioner is implicated in this false case when no allegation was levelled against them. The alleged subsequent incident happened on August 30, 21 i.e. after 3years from the filing of the prior complaint and charge sheet has been submitted and the same is still pending for adjudication .It is further argued that even if the allegation is taken for consideration its about threatening over telephone through the mobile phone of her husband for

lodging false matrimonial suit and hence there is absolutely no ingredient to constitute an offence under Section 498A of IPC and also no allegation of demand of dowry made against him, so, it is glaringly visible that the I.O without any investigation has casually submitted the chargesheet under section 498A IPC along with 3 & 4 of the Dowry Prohibition Act and if this proceeding is allowed to be continued it would be a sheer abuse of the process of law. Hence prayed for quashing of the proceeding.

6. Learned counsel for the opposite party appears and argued that this incident happened subsequently when she was threatened by her husband and this petitioner and such threatening is given over the mobile phone of her husband. He pressurized her to transfer her parent's flat and also to withdraw the pending proceeding and over which such threatening was given and she was tortured and again ousted on that day from her matrimonial house. It is submitted that the petitioner must face the trial since the charge sheet has been submitted and materials are collected during the course of investigation which prima facie established the case of the defacto complainant.

7. Learned advocate representing the State on the other hand submits that there is not iota of material in this complaint, which attracts the provision under Section 498A against the present petitioner, who is the cousin brother-in-law. The allegation in no way constitute an offence to attract section 498A

IPC and the chargesheet ought not to have been submitted against him. The previous complaint is still pending for adjudication and submits that the present proceeding would be an abuse of the process of law and hence to be quashed.

8. Heard the submission of the learned counsels. In this case, prima facie, it is seen that the marriage between the parties took place in 2004 according the Hindu Rights and Customs and they lead the conjugal life for a long period of time and also gave birth to a child. However, later on the marital discord cropped up between her and the husband and in laws and a complaint was lodged on July 9, 2019 against the husband and almost all the in-laws of inflicting torture upon her both physical and mental on demand of dowry. She specifically averred therein that on 30.08.2010, 12.02.2011, 19.01.2011, 29.05.2011 and 06.01.2012 she was thrown out from her matrimonial house and she compelled to stay with her mother. She also averred that all Stridhan articles, clothing, furniture were returned to her while she was ousted from her matrimonial house. However, after the said dispute, they again decided to live together in a separate flat and accordingly, her husband purchased a separate flat in his own name. She further alleged that her husband abandoned her living her alone in the said flat and she was continuously harassed of mental and physical torture by her husband and in laws. The said complaint culminated into filing chargesheet, which is still pending for adjudication. The present

complaint is filed long after four years from the said complaint where allegations are levelled against her husband and two brother in-laws including the present petitioner and in this complaint, she again arrayed the husband and two brother-in-law, Mr. Sudip Mukherjee and the present petitioner as accused . The allegations are formally found as she was called on August 30, 2021 at her matrimonial home and there such threatening was given by the petitioner to assist her husband to lodge false matrimonial cases . It is argued that a matrimonial suit is already filed by the husband for a decree of divorce. So the complaint manifest that the petitioner was not present in the said flat and the nature of threatening given even if accepted in toto no offence can be found to have constituted under section 498A of the IPC .In terms of section 498A of the Indian Penal code the essential ingredients to constitute the offence are the woman should be married and she was subjected to cruelty and such cruelty consisted in i) Any lawful conduct as was likely to drive such woman to commit suicide or to cause grave injury or danger to her life limb or health whether mental or physical. ii) Harm to such woman with a view to coercing her to meet unlawful demand for property or valuable security or on account of failure of such woman or any of her relations to meet the lawful demand.

iii) the woman was subjected to such cruelty by her husband or any relation of her husband .

9. On perusal of the case Diary produced before this court on behalf of the prosecution and upon going through the materials recorded under Section 161 it appears that only general and omnibus allegations have been made and no materials has surfaced with regard to the allegations levelled against the present petitioner in this complaint which can attract any of the above ingredients .

10. Another aspect that has come before this Court is that after this complaint was lodged, a divorce proceeding has been filed by the husband for a decree of divorce, which is still pending. Filing of a matrimonial suit by a husband against his wife is between the two parties and the decree to be passed by a court of law considering the evidences to be adduced on behalf of both the parties and a third party hardly has any scope to be even impleaded in such suit and hence even if it is accepted that it was said that her husband will file false suit against her cannot come within the fore corner of the word cruelty.

11. It is no more res integra that the power of the High Court under Section 482 of the Code is very wide and High Court can exercise its power under the provision relating to cognizable offence to prevent the abuse the process of any Court or otherwise to secure the end of justice. In the case ***State of Haryana Vs. Bhajanlal***, the Hon'ble Supreme Court considered the detail, the scope of High Court under Section 482 of the Code

of Criminal Procedure as well as Article 226 of the Constitution of India to quash the F.I.R. and referred to several judicial precedents. The Hon'ble Apex Court identified the instances in which the F.I.R./complaint can be quashed by exercising such power and in *paragraph 102 clause 1 and 3 which are as follows;*

1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constituted any offence or make out a case against the accused.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same does not disclose the commission of any offence and make out a case against the accused.

12. In the decision of ***Preeti Gupta & Anr. Vs. State of Jharkhand & Anr.*** Reported in ***(2010) 7 SCC 667***, and ***Geeta Mahrotra & Anr. Vs. State of U.P. & Anr.*** reported in ***(2012) 10 SCC 741***, it was held and observed by the Hon'ble Supreme Court in the case of matrimonial dispute casual reference was made in the FIR against the co-accused in absence of any specific allegation is required to be interpreted under Section 482 of the code of Criminal Procedure.

13. From the facts and circumstances of the instant case, prima facie, this court finds that there was previous complaint

implicating the husband and all other in-laws where no allegation was leveled against the present petitioner and in the subsequent complaint with an allegation of threatening over phone of her husband to transfer the property otherwise false matrimonial suit will be filed by her husband with his assistance cannot constitute an offence under Section 498A of the IPC. Since, no allegation of demand of dowry was made against the present petitioner Section 3/4 of the Dowry Prohibition Act also cannot lie against him. In the charge sheet no opinion of the I.O can be found against the petitioner for which the petitioner has been implicated as an accused.

14. On careful consideration of the entire facts and circumstances of the case and the law laid down in this regard, this Court is of the considered view that if the proceeding is allowed to be continued further, it would be sheer abuse of the process law and hence, this proceeding is liable to be quashed qua the petitioner .

15. Accordingly, the revisional application stands allowed .All other connected applications if any stands disposed of .

16. The entire proceeding pending before the Chief Judicial Magistrate be quashed qua the present petitioner.

17. There will be no order as to costs.

18. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(CHAITALI CHATTERJEE (DAS), J.)