

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 3828 OF 2023

MANDAKINI BANDOPADHYAY @ BANERJEE & ORS.

VS

THE STATE OF WEST BENGAL & Ors.

For the Petitioners : Mr. Kallol Mondal, Adv.
Mr. Krishan Ray, Adv.
Mr. Souvik Das, Adv.
Mr. Anamitra Banerjee, Adv.
Mr. Akbar Laskar, Adv.
Mr. Sreyash Kumar Singh, Adv.
Ms. Moupiya Chakraborty, Adv.

For the State : Mr. Debasish Roy, Adv.
Mr. Koushik Kundu, Adv.

For the respondent
No. 2 : Mr. Chittapriya Ghosh, Adv.
Mr. Somesh Kr. Ghosh, Adv.
Ms. Priyanka Saha, Adv.
Ms. Tulika Bag, Adv.

Last heard on : 26.02.2026

Judgement on : 26.02.2026

Uploaded on : 27.02.2026

CHAITALI CHATTERJEE DAS:-

1. This revisional application is filed for quashing of a proceeding pertaining to G. case no. 122 of 2019 dated January 27, 2019 under Section 498A A/406/34 of the Indian Penal Code, 1860 read with Section 3/4 of the dowry provision act, now pending before the Court of learned Judicial Magistrate, 2nd court, Arambagh, Hooghly.

Case of the petitioner

2. The petitioner no. 3 is the husband of the Opposite Party no. 2 and works as a lecturer, Education Department of Steel Authority of India, IISCO steel plant, Burnpur. Petitioner no. 1 and 2 are the mother-in-law and father-in-law of the Opposite Party no. 2. The love affair embroiled between petitioner no. 3 and the Opposite Party no. 2 culminated into marriage, solemnised on October 21, 2003 under Special Marriage Act and they suppressed such fact from their respective families for several years because of the dislike by the father of the opposite party no.2 and subsequently, the social marriage took place on February 15, 2006. They lead conjugal life for long nine years after which they were blessed with a male child in the year 2009, who is a patient of cerebral Palsy.
3. The marital discord started since after birth of such child as he had to undergo several treatments and needed to attend neurology OPD at regular intervals for follow-up treatment and every year he is to attend NIMHANS for his check-up. The petitioner gradually found the behavioural changes of Opposite Party no. 2, as she became reluctant towards continuing the matrimonial tie and on

asking the reason she along with her family members, became infuriated and insulted the petitioner number 3 and did not allow him to enter their house. They even restrained him from meeting with his own minor son. Such intention of the Opposite Party no. 2 and her apathy towards her husband and differently able child was clear from the fact stated by the Opposite Party no. 2 in connection with a proceeding filed before the court of District Judge, at Asansol, where the petitioner no.3 had prayed for custody of his minor son and the Opposite Party no. 2 wanted to give the custody of a her minor to her husband.

4. Several litigation arose by and between the parties and in the above factual backdrop, the Opposite Party no. 2 lodged the complaint against the petitioners alleging misbehaviour with her and her differently able child resulting had to suffering of mental abuse and on January 10,, 2019, her husband in an inebriated state of condition inhumanly, tortured her and threatened to kill her. That apart on January 25, 2019, the petitioners threatened to kill her along with her son and forced her to write on paper of her immoral relationship and threw them out of our matrimonial house. Further alleges they took away all her articles while driving hr out.
5. On completion of investigation, the charge-sheet was submitted under Section 498/406/34 of the Indian Penal Code. The petitioners then preferred an application under Section 239 of the Code of Criminal Procedure, 1973 before the learned court which was rejected by order dated September 5, 2023 against which this revisional application has been filed.

Submissions

6. The learned Advocate representing the petitioner would submit that the marriage is of long 12 years when they lead their conjugal life without any disturbances and resided together at different places of work of the petitioner no. 3 and at no point of time she lodged any complaint against the petitioner no. 3 or her in-laws alleging any misbehaviour with her or demand of dowry. The Opposite Party no. 2 on January 26, 2019 left the matrimonial home, completely on her own volition after admitting her extramarital relationship with one Anshuman Chakraborty, who is also a colleague of the petitioner no. 3 herein. The Opposite Party no. 2 herein vengefully had initiated the instant case against the petitioners as she was reluctant to continue her marital tie with the present petitioner no.3.
7. It is further argued that the complaint is completely silent about the role attributed by the present petitioner no. 1 and 2 who are aged and ailing persons. The allegations against the petitioners are improbable and blatant lies, and initiated the case out of vindictiveness and maliciousness as a weapon to be the petitioners to her desires. The bear reading of the written complaint would showcase that it was made upon lies and has no factual basis. It is further argued that any further continuance of the instant proceeding is an absolute abuse of the process of law and should forth with be quashed.
8. The learned Advocate relied upon the decision of ***Preeti Gupta and another vs state of Jharkhand and another*¹** , ***Dara Lakshmi Narayana and***

¹ (2010)7 SCC 667

others versus State of Telangana and another² in order to substantiate that FIR lodged with ulterior motives to settle personal scores and grudges against the husband and his family members, making vague and omnibus allegations without mentioning any specific details, including date, time, place, or manner of commission of alleged occurrence to be quashed.

9. Per Contra The learned advocate representing the opposite party strenuously argued that the petitioners have come before this court at post investigation stage when the charge-sheet has been submitted. In course of investigation, the investigating officer collected the materials, recorded the version of various witnesses under section 161 of the code of criminal procedure and prima facie found the allegations made by the opposite party no.2 ,established .In order to buttress the argument of the petitioner the learned Advocate has relied upon the decision reported in ***State of Tamil Nadu by Ins of police, vigilance and anticorruption versus N. Suresh Rajan***³, where it was held that while considering a petition under Section 227 of the Code of Criminal Procedure, the Court has to see whether from material on record it could be said that accused might have committed offence. It did not hold mini trial and come to conclusion that material produced warrant conviction. The learned Advocate further relied upon the decision reported in ***State of Rajasthan versus Ashok Kumar Kashyap***⁴, where also the same principal was reiterated that at this stage of framing of charge and considering discharge application, mini trial is not permissible.

² (2025) 3 SCC 735

³ AIR 2014 SC (supp) 1982

⁴ AIR online 2021 SC 210

10. Learned Advocate, representing the State placed the case diary and the relevant statements recorded which primarily supports the case of the prosecution and hence argued that the petitioners should have faced the trial. It is further submitted that in course of investigation, the articles were seized as claimed by the Opposite Party no. 2, and hence the petitioners can be discharged from the charge under Section 406 of IPC.

Analysis

11. Heard the submissions .The above mentioned factual matrix, coupled with the submissions advanced by the learned counsels representing the respective parties and the pleadings discloses that in the year 2003, both the petitioner no. 3 and the Opposite Party no. 2 being students of Bardhaman University entered into a relation and got married socially on February 15, 2006. The claim of the petitioner of their being married under Special Marriage Act in the year 2003 is not been admitted by the Opposite Party no. 2 and such veracity cannot be tested before this court ,however the marriage is not disputed . Admittedly, they lead conjugal life for a considerable period till 2019, when a proceeding was initiated on behalf of the Opposite Party no. 2, under Section 125 CRPC being, Misc. 15 of 2019, for getting maintenance from the petitioner no. 3 /husband. It can be further seen that they were blessed with a male child on January 10, 2009, but since birth, the child was a patient of Cerebral Palsy and as a Special child, he required special treatments and therapist on regular interval. The materials further revealed that gradually, the marital relationship between the parties got deteriorated and it went to lodging of an FIR before the Officer-in-Charge Goghat Police Station on January 27, 2019 against the present petitioners alleging of demand of dowry and mental torture

inflicted on her as she gave birth to a specially abled child, and subsequently suffered a miscarriage. Her allegation further disclosed instigation on her of committing suicide by the petitioners. Further an amount of Rs.1, 00,000/- was taken as a loan from her mother by the husband and pressurised her to have her father's property, and despite her best effort to keep the matrimonial relation intact, she continued with such relation. She further mentioned about an incident happened when she was inflicted with physical and mental torture by the petitioner no.3 in inebriated condition on January 10, 2019 and threatened her not to keep relation with parents but she did not lodge any complaint even after such incident. After that on January 25, 2019, she and her special able child were driven out by the petitioners after compelling her to write about an immoral relationship of her and with a threatening of dire consequences in case of intimating anyone about such threat. So prima facie there is an admission about her extra marital relationship however the veracity of such document whether procured forcefully or not cannot be ascertained by this court.

- 12.** She also alleged that all her articles and her personal belongings, and the handicapped certificate of her minor child and medical papers were kept by the petitioners and hence she compelled to lodge such complaint. The lists of articles kept by the petitioners were annexed with the petition. On the basis of such complaint, the investigation started and on completion of such investigation charge sheet was submitted by the investigating officer and also seized the articles along with the academic certificate and returned the same to the complainant as per Zimmanama.

13. The petitioners appeared before the court and filed an application on June 23, 2023 praying for discharge from this case. The learned Court, considering the submissions advanced took note of the decision of the **Hon'ble Supreme Court in state of Karnataka versus M.R Hiremath**⁵ where it was held by the Hon'ble Supreme Court that it is settled principle of law that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on the record by the prosecution is a true and evaluate the material in order to determine whether facts emerging from the material taken on their face value, disclose the existence of the ingredients necessary to constitute the offence. The Learned Court also was of the view that the statement recorded under 161 of the Code of Criminal Procedure by the Investigating Officer consist of not only interested persons of the case, but also that of the neighbour of both the de-facto complainant and the petitioners and the veracity of the said witnesses cannot be looked at this stage, and as a prime facie case has been made out by the complainant and hence refuse such prayer of discharge.

14. In the charge-sheet, the Investigating Officer recorded the statement of seven witnesses and cited them in order to establish the case of the prosecution which included the brother and uncle of the complainant and two neighbours of both Opposite Party no. 2, and the petitioner no. 3. On close scrutiny of the content of the written complaint as well as on perusal of the statement of the witnesses, no specific date, year, months can be found in respect of the torture as alleged. No description of torture also can be found in inflicted upon the Opposite Party no. 2 by the petitioner no. 1 & 2 being the

⁵ (2019) 7 SCC 515

parents-in-law. In the case of **Dara Lakshmi Narayana (Supra)** the allegations made in the FIR were vague and omnibus. No specific details or described any particular instance of harassment and also the time, date, place, or manner in which the alleged harassment occurred were also not mentioned and the Hon'ble Supreme Court held that FIR lacks concrete and precise allegations. It was observed that:-

'a mere reference to the names of family members in a criminal case arising out of a matrimonial dispute, without specific allegations, indicating their active involvement should be nipped in the bud. It is well recognised fact, born out of judicial experience, that there is often tendency to implicate all the members of the husband's family. Domestic disputes arise out of a matrimonial discord. Such generalised and sweeping accusations and supported by concrete evidence or particularised allegations cannot form the basis for criminal prosecution. Court must exercise caution in such cases to prevent miss use of legal provisions and the legal process and avoid unnecessary harassment of innocent family members.'

15. In the case of **Preeti Gupta and another (Supra)** the Hon'ble Supreme Court observed and held that genuine cases of dowry harassment is a matter of serious concern, but exaggerated version of small incidence should not be reflected in the criminal complaints.

16. The observations made in the above were in the petition under Section 482 Cr.P.c for quashing of the entire proceeding, and the instant case is been filed for discharge which was turned down. It is settled law that the probative value of the material should not be gone into while considering discharge application

and the Court is not expected to go deep into the matter and to hold that the materials would not warrant conviction, but it needs to be considered where there is a ground for presuming that the offence has been committed and in case from materials on record and on its probative value, the court thinks that the accused might have committed the offence. It can frame the charge.

17. In the case of ***Neelu Chopra & Anr. vs Bharti***⁶ the Hon'ble Supreme Court held that when the complaint is sadly vague, it does not show as to which accused has committed what offence and what exact role played by the Appellant in commission of offence under such circumstances, it would be an abuse of the process of law to allow the prosecution to continue against the agent parents on the basis of such vague and general complaint.

18. In another decision of ***Kahkashan Kausar versus state of Bihar***⁷, where also the general allegations were levelled against the applicant without specific and distinct allegations made against either of the appellant and none of the appellants have been attributed any specific role and that leads to a situation where one fails to ascertain the role played by each accused in furtherance of the offence, and it was held that the allegation made against being general and omnibus do not warrant prosecution.

19. In the present case also on the face of the complaint, it manifest that since after marriage in the year 2006, till 2019, the Opposite Party no. 2 had no occasion to file any complaint before any authority, intimating any torture, either mental or physical inflicted on her by her husband or parents-in-law on demand of dowry. It can be gathered further that the custody of the child is

⁶ (2009) 10 SCC 184

⁷ (2022) 6 SCC 599

with the father on consent of the opposite party no 2. The petitioner no.1 and 2 being the parents-in-law, hardly resided with the Opposite Party no. 2, since she mostly resided with her husband at his place of work at various places of the state.

20. In the case of ***Preeti Gupta (Supra)*** Hon'ble Supreme Court held the courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases.

21. Section 498A deals with offences committed by the husband or relatives of the husband subjecting cruelty towards the wife. The said provision reads as follows.

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.

In the present case nothing is available to constitute the offence of either the part (a) or (b) of the above provision against the present petitioners. In the case of **Sanjay Kumar Rai vs State of U.P⁸**, it was held by the Hon'ble Apex Court that *"it is well settled that the trial court while considering the discharge application is not to act as a mere post office. The Court has to shift through the evidence in order to find out whether there are sufficient grounds to try the suspect. The Court has to consider the board probabilities, total effect of evidence and document produced and the basic infirmities appearing in the case and so on Union of India vs Prafulla Kumar Samal⁹."*

Conclusion

22. On close scrutiny of the entire facts and circumstances of the case it transpires that the written complaint suffers from material particulars and the role attributed by the present petitioner no. 1 and 2, the senior citizens and septegerian persons, in respect of the allegations levelled against them. The learned Magistrate, despite being duly apprised of the contents of the written complaint and the materials collected during investigation- which disclose only general and omnibus allegations against the petitioner no. 1 and 2 and are conspicuously silent as to any role attributed to them and lacks specific details about the date and manner of torture inflicted upon her by the present petitioner no. 1 and 2, refused their prayer for discharge along with the husband on the ground that the court cannot hold a mini trial. This court is

⁸ 2015 SCC Online SC 367

⁹ (1979) 3 SCC 4

not agreeable with such observation as the complaint itself and the materials collected during investigation are conspicuously silent about their specific role as discussed above and no occasion arose to hold a mini trial. Therefore the said order is liable to be set aside so far the petitioner No 1 and 2 are concerned. However this court fully endorse the view so far the petitioner no 3, the husband is concerned.

23. Hence, this revisional application stands allowed in part.

24. The order refusing to discharge the petitioner no. 1 and 2 is here by set aside. The petitioner no. 1 and 2 are here by discharged from the charges levelled against them.

25. So far, the petitioner no. 3 is concerned, the order passed by the Learned Magistrate is here by affirmed.

26. All connected applications stands disposed of.

27. No order as to cost.

28. Urgent certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(CHAITALI CHATTERJEE DAS,J.)