

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 4344 OF 2023

JAFAR SADAK ALI

VS

STATE OF WEST BENGAL

For the Petitioner : Mr. Himanshu De, Adv.
Ms. Rashmi Khatun, Adv.
Ms. Monami Mukherjee, Adv.

For the State : Mr. Debasish Roy, Ld. P.P.
Ms. Pushpita Saha, Adv.
Ms. Atulya Verma, Adv.

Last heard on : 17.02.2026

Judgement on : 20.04.2026

Uploaded on : 20.04.2026

CHAITALI CHATTERJEE DAS:-

1. This revisional application is filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the proceeding arising out of Rampurhat Police Station case no. 117 of 2022 dated 19.2.2022, under section 498A/323/506 of the Indian penal code, 1860 read with Section 3 of Dowry

Prohibition Act, pending before the learned Additional Chief Judicial Magistrate, Rampurhat, District Birbhum.

Brief fact of the case

2. The marriage between the petitioner and the opposite party no.2 held in the year 2007 under Muslim Rites and Rituals and thereafter they lead conjugal life happily. The Opposite Party no. 2 was not satisfied with the marriage and after some time of the marriage and she demanded a separate accommodation. The petitioner made his best possible efforts to provide everything according to his ability to apprise the Opposite Party no. 2, but failed to do the same and she expressed her dissatisfaction and threatened to leave the matrimonial house. On 7 January 2022, a divorce was registered according to the Islamic law. The petitioner also married one Nasima Halim according to Islamic law and tradition on 9 March, 2018 which was registered.
3. It is the further case of the petitioner that the petitioner lodged a written complaint before the officer in charge, Ekbalpur Police Station, Kolkata under section 365/506/34/120 B/379 of the Indian Penal Code against the opposite party no.2 and her associate on 13.10.2022. The opposite party no.2, thereafter lodged the instant complaint before the Rampurhat Police Station on 19.2.2022 claiming to be the legal wife of the petitioner being married on 27.10.2007 and such marriage was consummated. She alleged that within few days of such marriage, her husband tortured mentally and physically who is petitioner was a habitual drunkard and she was deprived of food and clothing and further alleges of assault with fist and blows by the petitioner but in spite of her best effort, her husband did not change himself and demanded

more money .She also alleged that after the birth of her child in 2016, her husband deserted her with children. She subsequently came to learn about the illicit relation with a lady named Nasima Halim, and she raised objection of which no fruitful result yielded. On the basis of such complaint the case started which culminated into filing of chargesheet against the petitioner.

Submissions

4. The learned senior advocate representing the petitioner argued that the petitioner lodged the complaint in the year 2021 when the OP lodged the complaint on 19.2.2022, which is a counter blast to the said complaint and lodged with an oblique motive. It is further argued that on 7.1.2022, there was a divorce registered as per Muslim Shariat laws. Furthermore, there has been no whisper throughout the length and breadth of F.I.R as to the nature of tortures and the role attributed by this petitioner or the, mood, fashion and manner of torture. Therefore, there are general and omnibus allegations levelled against the petitioner when she admitted that the petitioner deserted the complainant in 2016 that is after 6 years, the said complaint was lodged in 2022. The present case is an afterthought and lodged just to harass the petitioner. It is further argued that the proceeding is barred by limitation under section 468(c) of the Code of Criminal Procedure, 1973 which contemplates that no court shall take cognizance of an offence after the period of limitation, which is three years, if the offence is punishable with imprisonment for a term exceeding one year, but not exceeding three years.
5. It is further argued that in the present case, the magistrate has erred in taking cognizance of the offence under section 498A/323/506, IPC and 4, Dowry

Prohibition Act except section 3 of Dowry Prohibition Act. The learned senior advocate has relied upon the decision reported in, ***Ashok Chaturvedi and others versus Shitul H. Chanchani & Anr.***¹, paragraph 5, ***Neelu Chopra and another versus Bharti***², paragraph 9, 10 and 11, ***Preeti Gupta and another versus State of Jharkhand & Anr***³, paragraph 28-36, 39, ***K.V. Prakash Babu versus State of Karnataka***⁴, paragraph 9-13, 15, 17

6. The learned advocate representing the OP No.2 on the other hand vehemently raised objection and argued that the marriage was registered in the year 2019, so question of desertion does not arise and the content of the written complaint clearly speaks the way she was treated despite she was still then the married wife of the petitioner. Not only was the petitioner provided with any amount to maintain her, he did not take care of his children also. It is further argued that learned Magistrate rightly took the cognizance as the charge sheet has been submitted and primary materials are found against the petitioner for which he must face the trial.

Analysis

7. Heard the submissions. The marriage between the parties was solemnised on 27.10.2007 under the Muslim rights and customs that can be found from the charge sheet. After marriage, they led a conjugal life, and after few years gave birth to a daughter and son who were aged about eight years and six years when the charge sheet was submitted. In course of investigation, the

¹ (1998) 7 SCC 698

² (2009) 10 SCC 184

³ (2010) 7 SCC 667

⁴ (2017) 11 SCC 176

statements of the various witnesses were recorded, and it revealed that the de facto complainant was suffering from bone ulcer and was under treatment. None of the statement reflects about any divorce registered between the parties. The document annexed with the revision application being a certificate shows an affidavit affirmed before the Notary Public of Kolkata by the present petitioner and hence he exercised the power of Talaque divorce according to Islamic Shariyat and law, and on that day, he pronounced the Talaque E Rajai upon her wife/the op no .2 herein according to Islamic Shariat and law.

8. The petitioner has stated before this court that such divorce was registered on 7 January, 2022 in the affidavit while pronouncing such Talaq divorce, his wife was not present. The date of marriage is found on 15.3.1019 in the marriage certificate, when in the affidavit the petitioner mentioned their marriage solemnised in 17.10.2007. He never averred in the revisional application about the registration of marriage held subsequently in the year 2019. Such marriage registration certificate, apparently nullifies the plea taken by the petitioner that he deserted the opposite party no. 2 since 2016.
9. In the written complaint, the opposite party no. 2 mentioned that post the birth of her child in 2016 but did not stated that from 2016 the husband deserted her with the minor children without giving any financial assistance in any form. The marriage with Nasima Halim was commenced in the year 2018. Therefore, there are ample contradictions in the statement of both the petitioner as well as the opposite party no. 2 regarding the exact time since when they are living separately. If the version of the husband is to be believed, they are living separately since 2016 but the registration certificate speaks

otherwise. The version of the wife is the desertion post-delivery of his child in the year 2016 again contradicts her own statement.

10. The petitioner has filed the supplementary affidavit incorporating the charge sheet which includes the various statements recorded in course of investigation. The allegation of illicit relationship has no basis as she was married with the petitioner however the authenticity of the certificate cannot be decided by this court. From the statement made during investigation canvassed threatening given to her that unless she gave Talaque to him, she will face consequences. Further, the present opposite party no.2 was suffering from bone ulcer and the petitioner did not take proper care of her and abused the opposite party no. 2 and her parents and thereby made a mental cruelty. The Marriage certificate is of the year 2019 with effect from 27.10.2007 was seized from the house of the opposite party no. 2, which reflects that the marriage was registered under a Special Marriage Act in the year 2019.

11. The learned senior advocate relied upon the decision of **Neelu Chopra (Supra)** where the Hon'ble Supreme Court held that :-

“in order to lodge a proper complaint, mere, mention of the sections and language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing such offence.”

In the case of **Ashok Chaturvedi and others. (Supra)** it was observed that:-

“the question that yet remains for consideration is whether the allegations made in the petition of complaint together with statements made by the complainant and the witnesses before the magistrate taken on their face value, do make the offence for which the magistrate has taken cognizance of ?”

In the case of **K.V. Prakash Babu (supra)**, the Hon'ble Supreme Court discussed what amounts to cruelty under section 498A and held that:-

“section 498A, 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 conduct of person concerned. The concept of mental cruelty depends upon the milieu and the strata from which the person came from and definitely has an individualistic perception regarding being had to one's endurance and sensitivity”. It was observed that “extramarital relationship, per se would not come within the ambit of section 498A. It would be an illegal or immoral act, but other ingredients are to be brought home before it can be held to constitute a criminal offence”.

12. In the present case the complaint was lodged on 19th of February 2022 by the present opposite party no. 2, where it has been alleged that the opposite party no.2, because of turn of events went into depression and trauma, and because of the continuous demand of registering the property in his name, and the threatening given with dire consequences. He also pressurised her to sign on divorce paper and she asked for money for her treatment on 18th of February 2022, as she was suffering from paucity of fund and practically the

petitioner pronounced Talaque in her absence and did not intimate her so she was in dark about the said Talaque .

13. So the allegation as made in the complaint primarily suggests that the petitioner put pressure on her to sign on divorce paper allegedly culminated in the subsequent act of affirmation of an Affidavit dated 7 January 2022 purportedly in exercise of the power of Talaque .It glaringly manifest that the petitioner tried to suppress the Divorce from the opposite party no.2 and no communication was made with her intimating about such Talaque. The registration certificate under Special Marriage Act discloses that till 2019, the relationship existed between the parties and the marriage was registered under a Special Marriage Act.

14. The FIR cannot be treated as an encyclopaedia and hence the version narrated by the OP no.2 regarding desertion by the petitioner was mentioned as post 2016, after birth of her child. It is clear from the content of the written complaint as well as from the statement recorded in course of investigation that she was suffering from serious health issues for which continuous treatment was necessary. More so she was burdened with two children born from the wedlock of the opposite party no. 2, and nothing is found to show that the petitioner was maintaining those children. In this revisional application he only averred that the demand of opposite party no. 2 was so high that could not suffice the needs of the opposite party no.2 and lastly on 7th January, 2022 Divorce was registered according to Islam shariat but he never uttered since when they were living separately. The previous complaint lodged on 12.10.22 under section 365/506/34/120b IPC against 5 accused

including the opposite party no 2 with an allegation of abduction of Nasima Bibi .Therefore even though the present complaint is lodged after lodging of the said complaint and even if it is treated as a counter blast to such a complaint, the allegations levelled against the petitioner are no way connected with that complaint.

15. The purpose of exercising power under section 482 of CRPC is to prevent the abuse of the process of court as well as to secure the ends of justice. In the decision of **Preeti Gupta and another (Supra)** it was observed by the Hon'ble Supreme Court in paragraph 14 that ;

“ This court in a number of cases has laid down the scope and ambit of courts’ power under section 482 CrPC. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists. Inherent powers under section 482 Cr.P.C can be exercised:

- i) to give effect to an order under the Code;*
- ii) to prevent the abuse of process of court; and*
- iii) to otherwise secure the ends of justice.”*

The learned senior advocate relied upon the paragraph 26 of the judgement where it was held taking note of **Zandu pharmaceutical Works Ltd. V Mohd Sharaful Haque** in para 8;

“...It would be an abuse of process of court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if find that initiation /continuance of it amounts to abuse of the process of court or quashing of these

proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out, even if the allegations are accepted in toto.”

16. This court fully agrees with the above observation and compares the fact and circumstances of this case where from it is clear that the relationship between the parties were strained because of marital discord and she used to leave separately in the apartment where the petitioner often visited and their marriage was registered long after 12 years in the year 2019 under the Special Marriage Act when admittedly he married Nasima Halim in the month of March 2018. The daughter was born in the month of February 2016 as can be found from the said Marriage certificate. It is further apparent that the petitioner did not take any responsibility to maintain the opposite party no.2, which was continuously suffering from health issues and having two children and lastly, he also threatened her to transfer her flat in his favour.

17. The point of limitation as raised by the learned senior advocate harps the very root of maintainability of the complaint itself but it's a settled law that offence under section 498A, IPC is a continuing offence and hence for calculating such offence the last date of torture is to be considered. In the present case the second child was born in the year 2016 and post her delivery the husband deserted her which does not imply that immediately after the birth the husband deserted .This fact can be corroborated from the marriage

registration certificate which was seized from the possession of the opposite party no. 2 and it reveals that their marriage was registered in the year 2019 though in the meantime the petitioner got married with Nasima Halim. So either the second marriage was suppressed as the wife alleged to have an illicit relation with the said lady or to console her, their old marriage was registered. It further transpires the wife and children used to reside in a flat where often the petitioner visited and stayed and lastly pressurized her to transfer such flat.

Conclusion

18. Therefore upon a comprehensive consideration of the allegations levelled against the petitioner read in conjunction with the other materials collected during the course of investigation ,it appears that although the subsequent relationship with Nasima Halim may have acted as a triggering factor for the opposite party to set the police in motion,the same cannot said to be the sole basis for lodging the present complaint.The materials on record indicate that the discord between the parties was continuing in nature ,and it has been specifically alleged that the petitioner is a habitual drunkard and in such inebriated condition he used to subject the opposite party to abuse both physically and mentally .Its apparent he did not take the responsibility of the opposite party. no 2 and her minor children and gradually deserting them when the opposite party no.2 was in need of monetary assistance for her ailments which was developed in course of time. He further pressurized her to give divorce in default to face dire consequences, lastly he entered into an illicit relationship with one lady namely Nasima Halim. These allegations are found

corroborated by the witnesses whose statements were recorded in course of investigation. However none of them uttered anything about the second marriage with Nasima Halim which has been admitted by the petitioner.

19. Therefore on close scrutiny of the above, this court is of the considered view that while exercising the power under section 482 this court is not required to ascertain whether on the basis of the evidence collected the order of conviction can be passed or not but whether prima facie it can be found that there exists no materials to constitute such offence. The case of **K.V. Prakash (supra)** emanated from the order of conviction passed by the learned trial court against the husband who got acquitted from the charge of 302, IPC but convicted for the offence committed under section 498A read with section 3 of Dowry Prohibition Act and hence the entire case was decided on the basis of the evidences adduced when the present case has come for quashing of the proceeding and the parameters to be considered for exercising power under 482 Cr.P.C are absolutely different and hence distinguishable .

20. In the case of **Ashoke Chaturvedi and ors (supra)**, the allegations were under section 420/406/467/468 and 120- B IPC and the application for quashing was filed after the cognizance was taken by the Magistrate and the Hon'ble Supreme Court held that merely because the accused has right to plead at the time of framing of charges, there is no materials for framing of charges, he is not debarred from invoking the inherent jurisdiction after the cognizance was taken by the Magistrate.

21. In this case the cognizance is yet to be taken but this court is not denuded of exercising the discretionary power under section 482 CrPC to quash a

proceeding to prevent abuse of the process of law but this court do not find any such materials to exercise such power at this early stage to quash the entire proceeding against the petitioner. However, the charges made under section 323 or 506 of the Indian Penal Code are without any basis as no allegations were levelled in the complaint which can attract such provisions and from the materials collected also no ingredients are found to constitute such offences and hence the proceeding qua the charges under section 323 and 506, IPC, are liable to be quashed against the petitioner.

22. On careful consideration of the available materials it transpires further that the essential ingredients are missing in the complaint which are necessary to constitute an offence under section 3 & 4 of Dowry Prohibition Act as no case of demand of dowry was made out excepting an omnibus and general averment which has no basis and it would be an abuse of the process of law if the proceeding is allowed to be continued for such offence. Hence the charges levelled under section 3/4 Of Dowry Prohibition Act in the F.I.R and in the charge sheet are liable to be quashed.

23. Therefore this Criminal Revisional Application stands allowed in part. The petitioner is discharged from the charges under section 323 /506 of the Indian Penal Code and section 3 and 4 of the Dowry Prohibition Act and the proceeding stands quashed against the petitioner so far these charges are considered .

24. The Learned Magistrate is directed to proceed with the case so far the charge under section 498A IPC is concerned .

25. Let a copy of this judgement along with the trial court record be forthwith sent before the Trial Court

26. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]

