

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 4808 OF 2022

REETU MUKHERJEE

VS.

THE STATE OF WEST BENGAL & ORS.

For the Petitioner : Mr. Kamalesh Chandra Saha, Adv.
Ms. Payel Mitra, Adv.
Ms. Piali Santra, Adv.
Mr. Anurag Bose, Adv.

For the Opposite Party
No. 2 : Mr. Shibaji Kumat Das, Adv.
Ms. Deblina De, Adv.

For the State : Mr. Suman De, Adv.
Ms. Sana Naaz, Adv.

Last heard on : 27.02.2026
Judgement on : 08.06.2026
Uploaded on : 08.06.2026

CHAITALI CHATTERJEE DAS, J. :-

1. The application has been filed for quashing of the entire proceeding as well as the FIR and the order dated 30.11.2022 and subsequent orders passed therein by the Learned Additional Chief Judicial Magistrate, Barrackpore in Dum Dum P.S. case no. 272 of 2022, under Section 406/506/120B/34 of the Indian Penal Code Pending before the learned Additional Chief Judicial Magistrate, Barrackpore, District 24 Parganas North.

Brief Fact of the case

2. It is the case of the petitioner that the opposite party no. 2 being the husband of the present petitioner filed a complaint under Section 156 (3) of Cr.P.C before the learned court alleging criminal breach of trust and criminal intimidation as she kept all his valuable documents under her custody and she did not return the same. It was averred in the petition of complaint that after marriage commenced on 10.12.2004, they started their conjugal life at the parental address of the opposite party no. 2 and on good faith the opposite party no. 2 handed over his important documents and papers to the petitioner. It is the case of the petitioner that she kept valuable documents and papers in her custody, but gave ultimatum that she will destroy the valuable documents, which includes the school certificate, mark sheet and books, technical certificate, birth certificate, Indane gas certificate, marriage certificate, bank fixed deposit, and other papers, including the air conditioners, sofa set table, bed, television, along with the gold Jewelleries, the details of which has been described in the complaint. It was further alleged that despite repeated demand and request made to the petitioner, she refused to return back the same documents and lastly he had to lodge a general diary with Bizpur Police

Station being GDE no. 1387 dated 15.3.2022 against the petitioner for her illegal acts, but as no action was taken and she lodged complaint to the Commissioner of Police, Barrackpore Commissionerate on 21.3.2022, which also yielded no result. Hence filed the complaint before the court under section 156(3) Cr.P.C. The further case of the petitioner that the Opposite Party no. 2 lodged a frivolous complaint against the petitioner as a counter blast to the complaint lodged by her against the husband and other members of the matrimonial house before Dum Dum P.S. being Dum Dum P.S. case no. 192 of 2022 dated 17.3.2022, under Section 498A of the Indian Penal Code and the instant complaint is lodged maliciously and failed to disclose any offence against the petitioner and thus the said F.I.R, and the order passed in is liable to be quashed.

3. It is further her case that without applying the specific provisions of law, the investigating officer seized some articles which do not belong to the Opposite Party no. 2, and the learned Court passed an order for handing over the same in favour of the Opposite Party no. 2. On 30.11.2022, on the prayer of the Opposite Party no. 2 the learned court once again passed an order of search warrant for recovery of the remaining article in terms of Section 93 and 94 Cr.P.C without verifying any documents regarding the ownership of the said article. Accordingly prayed for setting aside such order. It is further submitted that the entire allegation is civil in nature and there is no criminal liability against the petitioner and it is imperative that in the interest of justice, all the impugned proceedings should be quashed.

Submissions

4. The learned Advocate representing the petitioner further submits that an application under Section 13 (1)(ia) of the Hindu Marriage Act, 1955 has been filed by the present Opposite Party no. 2 for a decree of divorce. A revisional application was filed against an order dated 17.2.2023 passed by the learned Executive Magistrate, Barrackpore, 24 Parganas North in connection with M.P case no. 240 of 2022, under section 107 of Cr.P.C filed by the Opposite Party no.2, and the learned coordinate bench by an order dated 25.11.2024, quashed the entire proceeding . The learned advocate on the other hand argued that in course of investigation, the investigating officer seized number of documents some of which were mentioned in the petition of complaint and it prima facie proved the allegation levelled by the present Opposite Party no. 2 made against the petitioner. She claimed to be not aware about the document seized from her, which separately showed her ill intention as those were seized from her custody. She also did not give any objection when those documents were handed over to the present petitioner. The other articles are still lying in her custody and therefore it is necessary that the proceeding must be allowed to be continued.
5. The prosecution on the other hand argued that at the time of investigation when the documents, books and LIC policy certificate, birth certificate, etc. were seized, but due to non-availability of documents, other article being took air, conditioner, sofa set, table set, bed, TV, and Gold ornament would not be seized. It is further submitted that number of litigations are pending between the parties and on completion of investigation, the charge sheet has been

submitted against the present petitioner for which the trial should be allowed to be continued.

Analysis

6. Heard the submissions. The complaint lodged by the O.P no. 2 specifically alleged about handing over important documents and papers to the present petitioner being wife after marriage which were in her custody, but she gave threat to destroy the valuable documents and denied to return the same. The Learned court found that petition discloses prima facie existence of cognizable offence and hence send the petition by hand to the I/C of Dum Dum Police Station with a direction to treat the same as F.I.R. After the articles were seized, it was kept under the custody of the present opposite party.no.2 by furnishing zimmanama after executing a bond. On perusal of the report the learned court, passed the direction to take effective steps for recovery of the articles as mentioned in the written complaint and this revisional application is filed to quash the entire proceeding as well as the order dated 30.11.2022. In the decision as relied upon in ***Muskan versus Ishaan Khan***¹, it was held by the Hon'ble Supreme Court that normally for quashing an F.I.R, it must be shown that there exists no prima facie case against the accused persons. In the said case, the Hon'ble court found allegations of harassment and demand of dowry and found those were filed by the Appellant without mentioning the specific instances which were later on mentioned and held it as an afterthought and counter blast to the legal notice sent by the husband to the appellant and therefore observed that the approach adopted by the High Court amounts to conducting a mini trial. Hence, reversed, such order of quashing.

¹ 2025 SCC online SC 2355

7. The learned In the case of **Chandrasekhar Singh and others versus State of U.P²** and others, the learned Single Judge of High Court of judicature at Allahabad took note of the decision of **Sadhupati Nageswar Rao vs State of Andhra Pradesh³** where it was held that-

“The basic requirements to bring home the accusations under section 305 of the Code are the requirements to prove conjointly (i) entrustment and (ii) whether the accused was actuated by dishonest intention or not, misappropriated it or converted it to his own use to the detriment of the persons who entrusted it.”

In the decision of **Pratibha Rani vs Suraj Kumar and Anr.⁴** it was held that:-

“.....the fundamental core of the offence of criminal breach of trust is that a property must be entrusted and the dominion of the property should be given to the trustee.”

8. Here the opposite party no. 2 specifically stated in his written complaint that after marriage on good faith he handed over those documents like the birth certificate, technical papers ,School certificates birth certificate, Aadhaar card of the present petitioner, along with other valuable documents to the petitioner which she refused to return and some of them were seized from the custody of the present petitioner from her flat situated at 45, Arvind Sarani, F-4C Nerima Apartment, West, Kamalpur, Dum Dum, District 24 Parganas North. The said documents were produced by the petitioner in presence of the Opposite Party no. 2 to whom such documents were handed over under zimma. In fact, the

² CRR 1252 of 2004

³ AIR 2012 SC 3242

⁴ (1985) 2 SCC 370

materials so collected during enquiry would further reveal that other articles as mentioned in the written complaint was also found in her custody , but because of non-cooperation and threatening, those cannot be seized and hence the court passed the order of reseize. No justification can be found from the record in this case that as to why the birth certificate and Aadhaar card and other important valuable personal documents were found from her custody. In the petition before this court on oath, the petitioner has said that the investigating officers seized some articles which do not belong to the Opposite Party no. 2, but it has been denied by the present Opposite Party no. 2 and he received the documents under zimmanama after executing a bond.

9. Therefore when primarily as per the complaint the documents and some articles were found from her custody who was the wife of the opposite party no 2 so it can be said that he had the confidence in the person taking the articles so it is a clear allegation of entrustment by the husband to the wife. The opposite party received those documents after being satisfied and after executing a bond of Rs 50,000/- in such situation questioning of the ownership those articles or papers whether those belongs to the husband or not, can only be ascertained at the time of trial. The petitioner failed to establish before this court that as a counterblast to the complaint filed by her against her husband under Section 498A of IPC, the Opposite Party no. 2 has filed the complaint and or no such documents were recovered from her custody. In the decision of ***Pratibha Rani versus Suraj Kumar and Anr.***⁵, the Hon'ble Supreme Court discussed the requirement to maintain the charge of criminal breach of trust and in paragraph 41 observed-

⁵ (1985) 2SCC 370

“41. The Supreme Court in a large number of cases has held that the fundamental core of the offence of criminal breach of trust is that a property must be entrusted and the dominion of the property should be given to the trustee.....”

The Hon’ble Supreme Court took note of the case of **Jaswantrao Manilal Akhaney vs state of Bombay** ⁶ where it was held :-

“43. For an offence under Section 409 of the Penal Code, 1860, the first essential ingredient to be proved is that the property was entrusted..... but when section 405 which defines ‘criminal breach of trust’ speaks of a person being in any manner entrusted with property, it does not contemplate the creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event.”

The Hon’ble Supreme Court further observed that-

*“48. In the case of **State of Gujarat versus Jaswantlal Nathalal (1968) 2 SCR 408**, Hegde. J., speaking for the Court observed thus: the expression ‘entrustment’ carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the*

⁶ AIR 1956 SC 575

property must have confidence in the person taking the property so as to create a fiduciary relationship between them.”

10. In the instant case during subsistence of marriage tie the opposite party handed over his valuable documents as described in the petition of complaint to his wife. Whether she took those documents or the other article and jewellery or denied to hand over the same on demand is to be proved in course of evidence. Merely a criminal complaint is pending against the husband the complaint lodged by the husband cannot be treated as a counter blast to the same when it is evident valuable documents like Adhar card ,Birth certificate of the opposite party no. 2 are found lying under the custody of the petitioner who was residing in a different flat. The learned court passed the order to re –seize the articles after being satisfied about the ownership of the same but the provision is clear that there must be reason to believe and in this case in the order passed by the learned court no such specific satisfaction can be found specially in respect of the furniture ,fixtures and gold jewellery and therefore this court is inclined to set aside the said order with a direction to the learned court for further consideration in accordance with law.

11. It was held by the Hon’ble Supreme court that the inherent power which is sought to be entertained is naturally to be exercised to do the right and undo wrong in the course of administration of justice. So far the charge under section 506 IPC in order to attract ingredient of Section 506 IPC, the intention of the accused must be found to cause alarm to the victim. Mere vague and bald allegation that the accused threatened the victim with dire consequences without any intention to cause alarm would not suffice to attract the

provisions under Section 506 I.P.C. and in the instant case no such specific allegations are found to such extent .While giving evidence during SA also the complainant did not say anything about any threatening hence the complaint alleging commission of offence under Section 506 IPC so no prima facie case to attract this provision is attracted .Similarly no iota of materials can be found in the F.I.R to allow the proceeding with the charge under Section 120B IPC against the petitioner.

Conclusion

- 12.** Therefore the sum and substance of the above deliberation and on reading the complaint as a whole it results in conclusion that the proceeding pending with the allegation against the petitioner under section 406IPC cannot be quashed since it cannot be said to be the abuse of the process of law and the fact requires to be substantiated by adducing evidence and the available materials therefore does not warrant to exercise the jurisdiction under section 482 in this case to quash the entire proceeding. This court therefore in exercise of the inherent jurisdiction quashes the charge under Section 506/120B IPC directing the Learned Magistrate to proceed with the case with the charge under Section 406 IPC.
- 13.** However this Court does not find enough reasoning to pass the order dated 30.11.2022 to re-seize and hence directs the Learned Magistrate to hear afresh in accordance with law.
- 14.** In the result the Criminal Revisional application stands partly allowed with the above observation.

15. 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.]

