

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 261 of 2020

Deepak Chatterjee @ Dipak Chatterjee & Ors.

Vs.

The State of West Bengal & Anr.

For the Petitioners : Mr. Avishek Bhandari,
Mr. Dipayan Dan.

For the Opposite Party/State : Ms. Rita Dutta.

Heard on : 01.05.2023

Judgment on : 08.06.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings in GR Case No. 254 of 2015 presently pending before the Learned Judicial Magistrate, 2nd Court, Asansol, Paschim Bardhaman, arising initially out of Hirapur Police Station Case No. 28 of 2015 dated 04.02.2015 under Sections 498A/406/325/307/376/511/120B/34 of the Indian Penal Code, 1860 (later transferred to Asansol Women Police

Station for investigation), including order dated 17.06.2019 and all other orders passed therein.

2. **Mr. Avishek Bhandari, learned counsel for the petitioners** has submitted that the petitioner no. 1 is the father-in-law, the petitioner no. 2 is the mother-in-law and the petitioner no. 3 is the brother-in-law of the opposite party no. 2.
3. That the elder son of the petitioners no. 1 and 2, namely, Subhas Chatterjee (since deceased and hereinafter referred to as the 'elder son of the petitioners no. 1 and 2) was earlier married to one Sona Chatterjee nee Chakraborty but the said marriage culminated in a divorce. Thereafter, the said elder son of the petitioner nos. 1 and 2 got married to the opposite party no. 2 on 30.11.2006 according to Hindu rites and customs. After the said marriage, the opposite party no. 2 and the elder son of the petitioners no. 1 and 2 began residing separately at a rented accommodation at Shyambandh, Burnpur, Asansol.
4. That the petitioners, at the time of marriage of the opposite party no. 2 with the elder son of the petitioners no. 1 and 2, used to reside at Holding No. 459(N), Manik Chand Pally, Post Office – Burnpur, Police Station – Hirapur, Asansol, District – Burdwan, PIN – 713 325 and the opposite party no. 2, after her marriage with the elder son of the petitioners no. 1 and 2, never resided with the petitioners at the said address.
5. From the very beginning, the opposite party no. 2 was opposed to the notion of keeping good and healthy relationship with the petitioners. The opposite party no. 2 also did not allow the elder son of the petitioners no.

1 and 2 to keep in touch with the petitioners. The petitioners did not have any contact with either the opposite party no. 2 or their son after the marriage between the two.

6. That it came as a shock to the petitioners, when their elder son namely, Subhas Chatterjee, was purportedly found hanging in his room on 07.12.2013 and the cause of death was held to be suicidal.
7. That at the time of his death, the said Subhas Chatterjee was still residing with the opposite party no. 2. That immediately after the death of her husband, the opposite party no. 2 took all articles including her own belongings from their rented residence to her own paternal home.
8. That since the death of her husband, the opposite party no. 2 did not reside with the petitioners. However, she began targeting the petitioners with the intention to extort money from them by threatening to falsely implicate them in criminal cases. The opposite party no. 2, in connivance with notorious and anti-social elements of the society, began mentally and physically harassing the petitioners. The acts of the opposite party no. 2, harassing the petitioners, went to such intolerable extent that the petitioners chose to sell their house at Manikchand Pally and moved to their present address at Ahibushan Plaza (4th Floor), No. 1 Mohishila Colony, Atta Chaki More, Simultala, Post Office – Mohishila, Police Station – Asansol, District – Paschim Burdwan, PIN- 713 303.
9. That despite having no contact with the petitioners and never having resided together with the petitioners at any point of time either before or after the death of her husband, the opposite party no. 2 lodged a complaint with the Officer-in-Charge, Hirapur Police Station, on the

basis of which Hirapur Police Station Case No. 28 of 2015 dated 04.02.2015 under Sections 498A/406/325/307/376/511/120B/34 of the Indian Penal Code, 1860 was registered against the petitioners and four others namely Tarun Ganguly (uncle-in-law), Sumita Banerjee (sister-in-law), Sumanta Banerjee (husband of Sumita Banerjee) and one Mohan Sharma, inter alia, alleging as follows:-

“that the opposite party no. 2 herein and the elder son of the petitioner nos. 1 and 2 herein got married on 30.11.2006 at Tarapith Mandir in accordance with Hindu rites and customs; that the opposite party no. 2 herein came to her in-laws house at Hirapur Manikchand Pally under Hirapur Police Station and started residing with her husband, the petitioners herein and others; that at the time of marriage, the father of the opposite party no. 2 herein gave Rs.50,000/- (Rupees Fifty Thousand only), gold and silver ornaments and other valuables and articles to the petitioners and other accused persons according to their demand; that the petitioners and others mentally and physically tortured the opposite party no. 2 herein; that the petitioner no. 3 herein had the intention to sexually exploit the opposite party no. 2 herein; that the petitioners and the other accused persons further demanded dowry of Rs.1,00,000/- (Rupees One Lakh only) and a motor cycle; that the father of the opposite party no. 2 herein failed to fulfil such demand; that the torture meted out at the behest of the petitioners and the other accused persons grew and they deprived the opposite party no. 2 herein of food and mixed salt with her food; that the opposite party no. 2 herein gave birth a male child namely Aniket Chatterjee on 20.12.2008; that on 07.12.2013, the husband of the opposite party no. 2 herein passed away; that after the demise of her husband, every night the petitioner no. 3 herein returned home intoxicated condition; that on 14.01.2015, while the opposite party no. 2 herein was sleeping at her matrimonial home at Hirapur Manikchand Pally, the petitioner no. 3 herein trespassed into the bedroom of the opposite party no. 2 herein and tearing her apparel, attempted to rape her; that upon resistance at the behest of opposite party no. 2 herein, the petitioner no. 3 left her and fled away, threatening her; that on 22.01.2015, the petitioners herein entered into the room of the opposite party no. 2 herein and by tying her hands with ropes, attempted to kill her and her son by strangulation but when the

opposite party no. 2 herein raised hue and cry they left; that the one Mohan Sharma had entered into criminal conspiracy with the petitioners herein and had threatened the opposite party no. 2 herein and her son; that the opposite party no. 2 herein along with her minor son was driven out of her matrimonial home on 25.01.2015.”

10. It is submitted that even after the registration of the instant case, the opposite party no. 2 continued to threaten and intimidate the petitioners. The opposite party no. 2 also demanded Rs.8,00,000/- (Rupees Eight Lakhs only) from the petitioners. On one occasion, she forced the petitioner nos. 1 and 3 to put their signatures on a blank piece of paper and extorted Rs.20,000/- (Rupees Twenty Thousand only) from them. Unable to bear the incessant torture and intimidation meted out by the opposite party no. 2, the petitioner no. 2 preferred an application under Section 156(3) of the Code of Criminal Procedure, 1973 before the Learned Additional Chief Judicial Magistrate, Asansol and thereafter, pursuant to the direction of the Learned Magistrate, Asansol (S) Police Station Case No. 211/15 dated 27.05.2015 under Sections 341/323/384/448/386/34 of the Indian Penal Code was registered against the opposite party no. 2. The said case is still pending.
11. The investigation in connection with the instant case was made over to the Asansol Women Police Station on 24.02.2015. The investigating agency has submitted the charge sheet being Charge Sheet No. 149/15 dated 31.07.2015 **under Sections 498A/34 of the Indian Penal Code against the petitioners.**
12. That the petitioners, after receiving the copies in compliance with Section 207 of the Code of Criminal Procedure, 1973 preferred an

application before the Learned Magistrate on 30.01.2019, inter alia, praying for discharge. The said application was taken up for hearing on 17.06.2019 and by an order dated 17.06.2019, the said application was rejected.

13. It is stated that the statement of the opposite party no. 2 under Section 164 of the Code of Criminal Procedure, 1973 depicts beyond any reasonable doubt that the instant case is a concocted one and has been falsely registered to harass the petitioners.
14. That the opposite party no. 2 has unambiguously stated in her statement under Section 164 of the Code of Criminal Procedure, 1973 that she used to reside separately with her husband and even after the death of her husband, she was not staying with the petitioners at her matrimonial home owing to the purported objection of the petitioners. It is pertinent to mention in this regard that the opposite party no. 2 had, in contradiction to her statement under Section 164 of the Code of Criminal Procedure, 1973, alleged in her written complaint that she was residing with the petitioners after her marriage and was subjected to mental and physical torture by them.
15. It is stated that the investigation in this case has revealed that the opposite party no. 2 took away all her belongings to her paternal home on 14.12.2013 and such fact has been substantiated by the statement under Section 164 of the Code of Criminal Procedure, 1973 of one Sanjay Sarkar, who was present when the opposite party no. 2's belongings were taken to her paternal home and had put his signature on a document

endorsing the same. The said signed document has been seized in connection with the instant case.

16. It is further stated that the opposite party no. 2 has clearly stated in her statement under Section 164 of the Code of Criminal Procedure, 1973 that she had left her matrimonial home on 20.01.2015 owing to the torture meted out by the petitioners. However, she has alleged that the petitioners had attempted to murder her by strangulation on 22.01.2015. This inconsistency was duly noted by the Learned Additional Chief Judicial Magistrate, Asansol while granting bail to the petitioners. However, the Learned Judicial Magistrate, 2nd Court, Asansol failed to consider such anomaly while rejecting the discharge application preferred by the petitioners.
17. Thus, the array of the allegations made by the opposite party no. 2 has been found to be utterly baseless and the charge sheet submitted by the investigating agency has depicted the same. The statement of the opposite party no. 2 under Section 164 of the Code of Criminal Procedure, 1973 itself is sufficient to establish her mala fide intention to falsely implicate the petitioners. The Learned Magistrate, too, failed to consider the aforementioned facts and circumstances and rejected the discharge application of the petitioners by passing a non speaking order, without application of judicious prudence. Cumulatively, the aforementioned facts are sufficient to warrant the quashing of the instant proceedings in favour of the petitioners herein.
18. **In spite of due service there is no representation on behalf of the opposite party no. 2.**

19. **Ms. Rita Dutta, learned counsel for the State** has placed the case diary.

20. **Considering the materials on record and the case diary, the following facts are before this Court:-**

- i) In the written complaint, it has been stated that the opposite party no. 2 lived with her husband in a joint mess with the petitioners, since her marriage on 30.11.2006.
- ii) During that period she was allegedly tortured and her brother in law allegedly made sexual advances.
- iii) A son was born on 20.12.2008.
- iv) Her husband committed suicide on 07.12.2013.
- v) It is stated in the written complaint that after that till 2015 she was allegedly tortured and sexual advances were made towards her by her brother in law.
- vi) They allegedly tried to kill her with threat to give up her right in the family property.
- vii) She was allegedly driven out from her matrimonial home on 25.01.2015.
- viii) The written complaint has been filed on 04.02.2015.
- ix) **Charge sheet has been filed for offence punishable under Section 498A/34 of the Indian Penal Code.**

21. **The most relevant material/document/evidence in this case is the statement under Section 164 of the Code of Criminal Procedure of the complainant.**

22. **In her statement recorded under Section 164 Cr.P.C, the complainant has stated as follows:-**

- i) That as since her marriage she was not liked by the petitioners, she and her husband left her matrimonial home and started living in a rented accommodation at Burnpur.

Thus, the statements in her complaint that she lived in her matrimonial home till 25.01.2015, when she was allegedly driven out is not prima facie true.

- ii) The statement under Section 164 Cr.P.C. giving the reason for her husband's suicide has also not been stated in the written complaint.
- iii) She has stated that on 14.01.2015 when she went to stay in her matrimonial home, her brother again tried sexually abuse her.

23. All these statements have not been proved during investigation.

24. The present case against the petitioners is under Sections 498A/34 IPC.

25. **Section 498A Indian Penal Code lays down:-**

“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.

Ingredients of offence. — *The essential ingredients of the offence under Sec. 498A are as follows:-*

- (1) A woman was married;*
- (2) She was subjected to cruelty;*
- (3) Such cruelty consisted in—*
 - (i) any wilful 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.”*

26. In **Kahkashan Kausar @ Sonam & Ors. vs. State of Bihar & Ors.**, 2022 LiveLaw (SC) 141, the Supreme Court held as follows:-

“Issue Involved

11. *Having perused the relevant facts and contentions made by the Appellants and Respondents, in our considered opinion, the foremost issue which requires determination in the instant case is whether allegations made against the in-laws Appellants are in the nature of general omnibus allegations and therefore liable to be quashed ?*

12. *Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of section 498A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498A IPC as instruments to settle personal scores against the husband and his relatives.*

13. This Court in its judgment in **Rajesh Sharma and Ors. Vs. State of U.P. & Anr;** (2018) 10 SCC 472, has observed:-

“14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the statement of Objects and Reasons of the Act 46 of 1983. The expression 'cruelty' in Section 498A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be filed under already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement.”

14. Previously, in the landmark judgment of this court in **Arnesh Kumar Vs. State of Bihar and Anr;** (2014) 8 SCC 273, it was also observed:-

“4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grandfathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested.”

15. Further in **Preeti Gupta & Anr. Vs. State of Jharkhand & Anr;** (2010) 7 SCC 667, it has also been observed:-

“32. It is a matter of common experience that most of these complaints under section 498A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. 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. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.”

16. In Geeta Mehrotra & Anr. Vs. State of UP & Anr; (2012) 10 SCC 741, it was observed:-

“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of **G.V. Rao vs. L.H.V. Prasad & Ors. reported in (2000) 3 SCC 693** wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

“there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.” The view taken by the judges in this matter was that the courts would not encourage such disputes.”

17. Recently, in K. Subba Rao v. The State of Telangana, (2018) 14 SCC 452 it was also observed that:-

“6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the

husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”

18. *The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.”*

And finally the court held:-

“22. *Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the accused appellants, it would be unjust if the Appellants are forced to go through the tribulations of a trial, i.e., general and omnibus allegations cannot manifest in a situation where the relatives of the complainant’s husband are forced to undergo trial. It has been highlighted by this court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must therefore be discouraged.”*

27. Thus from the materials on record it is clearly evident that the statement of the complainant in her petition of complaint is in **total contradiction** to her statements recorded under Section 164 Cr.P.C. The materials on record including the statement of the complainant under Section 164 Cr.P.C. clearly show that the opposite party/wife never resided with the petitioners and thus the question of being inflicted with

cruelty as defined/laid down under Section 498A IPC does not arise. The ingredients required to constitute the said offence is not present in the present case.

28. It is thus seen that the materials in the case diary and the charge sheet there in, do not prima facie make out a case of cognizable offence against the accuseds/petitioners as alleged and there is no materials for proceeding against the accuseds/petitioners towards trial and this is a fit case where the inherent power of the court should be exercised to prevent abuse of process of Court/law.

29. The ultimate test therefore, is whether the allegations have any substance (***Prakash Singh Badal Vs State of Punjab, AIR 2007 SC 1274***).

30. In the Present case there is no substance in the allegations and no material exists to prima facie make out the complicity of the petitioners in a cognizable offence and as such the proceedings in this case is liable to be quashed.

31. **CRR 261 of 2020 is thus allowed.**

32. The proceedings in GR Case No. 254 of 2015 presently pending before the Learned Judicial Magistrate, 2nd Court, Asansol, Paschim Bardhaman, arising initially out of Hirapur Police Station Case No. 28 of 2015 dated 04.02.2015 under Sections 498A/406/325/307/376/511/120B/34 of the Indian Penal Code, 1860, and Asansol Women Police Station charge sheet no. 149/15

dated 31.07.2015 under Sections 498A/34 of the Indian Penal Code,
are hereby quashed.

33. No order as to costs.
34. All connected Applications stand disposed of.
35. Interim order if any stands vacated.
36. Copy of this judgment be sent to the learned Trial Court forthwith
for necessary compliance.
37. Urgent Photostat Certified copy of this Judgment, if applied for, be
supplied expeditiously after complying with all necessary legal
formalities.

(Shampa Dutt (Paul), J.)