

Arnab Saha and Ors Vs State Of West Bengal & Another

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 31, 2025

Acts Referred: Code of Criminal Procedure, 1973 " Section 468, 468(1)(c), 473, 482
Indian Penal Code, 1860 " Section 34, 406, 498A
Dowry Prohibition Act, 1961 " Section 4

Hon'ble Judges: Ajay Kumar Gupta, J

Bench: Single Bench

Advocate: Ayan Bhattacharya, Basabraj Chakraborty, Satyaki Chaudhuri, Aditya Tiwari, Nahid Ahmed, Sandipan Ganguly, Karan Dudhwewala, Faria Hossain

Final Decision: Dismissed

Judgement

Ajay Kumar Gupta, J:

1. Petitioners/accused persons preferred this instant application praying for quashing of the proceedings being A.C.G.R. Case No. 69 of 2022 arising

out of Haridevpur P.S. Case No. 3/22 dated 05.01.2022 under Sections 498A/406/34 of the Indian Penal Code, 1860 read with Section 4 of the Dowry

Prohibition Act, 1961, pending before the Court of the Learned Additional Chief Judicial Magistrate at Alipore, South 24 Parganas.

2. The background facts, which led to filing of this application, may be adumbrated as under:-

3. The opposite party no. 2/wife of petitioner no. 1 lodged a written complaint alleging, inter alia, that she got married with the petitioner no. 1

according to the provision of Special Marriage Act, 1954 followed by social gatherings. At the time of marriage, gold ornaments and expensive articles

were gifted to the accused persons as per their demand. Even on the date of marriage, the accused persons humiliated and insulted the family

members of the opposite party no. 2 due to non-fulfilment of their expectations. They had abused the opposite party no. 2 in filthy languages. The

accused persons started demanding more dowries in the form of cash and gold ornaments and when she failed to fulfil their demands, started inflicting

torture upon her both physically and mentally.

4. The opposite party no. 2/wife also found her husband's nature is of short tempered, adamant, abusive and aggressive. He even refused to meet

up with her basic needs and necessities towards her medication, fooding, clothing and other necessities.

5. In the month of June, 2016, she left her matrimonial home and took shelter in her parental home. All her stridhan articles were entrusted with her

parents-in-law on insistence of her husband. They did not allow to take with her stridhan. She believed all the stridhan articles like ornaments and all

other expensive articles have been misappropriated by the petitioner no. 2, mother-in-law. The parents-in-law always used to instigate her husband to

pressurise her for bringing more cash.

6. The opposite party no. 2 further alleged that whenever she demanded her stridhan articles from her husband and parents-in-law, every time they

blandly refused to hand over her stridhan articles lying in their custody. She came to know that her husband and parents-in-law opened the almirah

where belongings were kept and apprehended. They have misappropriated her gold ornaments and expensive articles.

7. On the basis of her written complaint lodged on 28.12.2021, an FIR was registered being Haridevpur P.S. Case No. 3/22 dated 05.01.2022 under

Sections 498A/406/34 of the Indian Penal Code, 1860 read with Section 4 of the Dowry Prohibition Act, 1961 against the accused/petitioners and

initiated investigation. Subsequently, charge sheet has been submitted against the present petitioners on 22nd April, 2022 being Charge Sheet No. 68 of

2022 under Sections 498A/406/34 of the Indian Penal Code, 1860 read with Section 4 of the Dowry Prohibition Act, 1961. On the other hand, the

contentions of the petitioners are that all allegations against the petitioners are false and fabricated. Whatsoever allegations alleged, out and out false.

Petitioners further denied all the allegations levelled against them. Hence, this Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONERS:

8. Mr. Bhattacharya, learned senior counsel along with others appearing on behalf of the petitioners filed written notes of argument and further made

three fold submissions and prayed for quashing of the instant proceeding as the same is, according to him, an abuse of process of law, as such, the

proceedings are required to be quashed for securing ends of justice.

9. The first limb of submission made by the learned senior counsel with regard to the delay and period of limitation for initiation of the proceedings.

The proceedings, as initiated by the police on the basis of complaint lodged by the opposite party no. 2/wife, was beyond the period of three years

which is not at all permissible in terms of Section 468(1)(c) of the Code of Criminal Procedure, 1973. It is apparent from the written complaint that the

opposite party no. 2 had left her matrimonial home in the month of June, 2016 whereas the impugned FIR was lodged on 28th December, 2021 which

is after the expiry of five years since the charges made against the present petitioners under Sections 498A/406/34 of the Indian Penal Code, 1860 and

Section 4 of the Dowry Prohibition Act, 1961 and all the Sections, even if proved, it attract a maximum period of three years imprisonment.

10. It is further evident from the FIR that there is no whisper regarding alleged torture either mentally or physically after June, 2016. In support of his

contention, the learned senior counsel has cited the following judgments as under:-

i. Udai Shankar Awasti Vs. State of Uttar Pradesh & Anr. (2013) 2 SCC 435;

ii. Kamlesh Kalra Vs. Shilpika Kalra & Ors. (2020) SCC OnLine 1493;

iii. Arun Vyas & Anr. Vs. Anita Vyas (1999) 4 SCC 690.

In those cases, the Hon'ble Supreme Court has quashed the charges as those were initiated beyond the period of three years and even no

explanation was furnished either in the FIR or in Charge Sheet. The proceedings are barred by limitation.

11. The second limb of submission was that the instant proceedings are counter blast to the matrimonial proceeding which was initiated by the

petitioner no. 1/husband against the opposite party no. 2 in the year 2016 being MAT No. 92 of 2016 seeking divorce. After filing the said matrimonial

proceeding the opposite party no. 2 intentionally to harass and to humiliate the petitioners, lodged a false and fabricated complaint. Even, during the

investigation, the police did not perform their duties according to law to unearth/uncover the truth and finally filed charge sheet against the petitioners

in perfunctory manner without sufficient materials. To support of his contention, learned senior counsel has placed a reliance of a judgment passed in

the case of Harmanpreet Singh Ahluwalia & Ors. Vs. State of Punjab & Or.s (2009) 7 SCC 712. In the said judgment, filling of proceedings as a

backlash action that too, on extremely general allegations was frowned upon by the Hon'ble Supreme Court.

12. So far as the third limb of submission, the learned senior counsel submitted that the allegations, made by the opposite party no. 2, are general and

omnibus in nature which does not disclose the sufficient ingredients of the alleged offences. Furthermore, no specific role was attributed either to the

husband or parents-in-law. There is no specific date and time mentioned in the FIR with regard to particular physical and mental torture. All

allegations are bald and general. She herself left her matrimonial home for her own reasons. She stayed with the petitioners for three years, however,

no specific incident mentioned by her for leaving matrimonial home in the FIR, as such, Charge Sheet, submitted by the police and the proceedings

thereof are required to be quashed. To support of his contention that in absence of specific role qua an accused, the continuance of proceedings was

held to be an abuse of the process of Court by the Hon'ble Supreme Court in umpteen numbers of cases, the learned senior counsel has also

placed reliance of following judgments as under:

- i. Pritam Ashok Sadaphule & Ors. Vs. State of Maharashtra & Anr. (2015) 11 SCC 769;
- ii. Mamidi Anil Kumar Reddy Vs. State of Andhra Pradesh & Anr. (2024) SCC OnLine 127;
- iii. Kahkashan Kausar & Ors. Vs. State of Bihar & Ors. (2022) 6 SCC 599;
- iv. Chandralekha & Ors. Vs. State of Tamil Nadu (2013) 14 SCC 374.

Learned senior counsel further submitted that Hon'ble Supreme Court and Hon'ble High Court specified that the daily wear and tear and/or

mismatch were never construed to be cruelty. Mental cruelty is part of the definition of cruelty yet in order to satisfy the test of mental cruelty, such

conduct must be of such nature that would cause "grave injury". Mere allegation of mental cruelty without being any detailed description as to

how such mental cruelty was perpetrated, the allegation of Section 498A of the IPC is not sustainable in the eye of law.

13. Lastly, the learned senior counsel cited the judgment passed in the case of Achin Gupta Vs. State of Haryana & Anr. AIR 2024 SC 2548 to

support of his contention that when the allegations are general and omnibus, then the Hon'ble High Court can quash the proceeding under Section

482 of the CrPC. In the referred judgment, the Hon'ble Supreme Court deprecated filing of 498A of the IPC cases on mere bald allegations. The

Hon'ble Court further held that the proceedings, initiated on the basis of general and omnibus allegations, would be manifestly mala fide. Then

such proceedings can be quashed.

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY NO. 2:

14. Per contra, Mr. Ganguly, learned senior counsel along with Mr. Dudhwewala appearing on behalf of the opposite party no. 2 vehemently opposed

the prayer of the learned senior counsel appearing on behalf of the petitioners and further submitted that there was no delay in lodging the FIR. The

cruelty perpetrated upon the opposite party no. 2 was continued even after leaving matrimonial home. They have continuously tortured upon her

mentally. She had lodged a General Diary No. 992 before the police station on 14.06.2021 i.e. after leaving her matrimonial home.

15. When she left her matrimonial home, she was not permitted to take her stridhan articles which were lying in the matrimonial home and,

subsequently, it came to her knowledge that petitioners had opened the almirah, where her belongings were kept. She demanded her stridhan articles

from her husband and parents-in-law but every time they refused to hand over her stridhan articles lying in their custody. Even after filing of

matrimonial suit and lodging the FIR, no stridhan articles were handed over voluntarily by the petitioners.

16. It was further submitted that during investigation, some of the stridhan articles were recovered. However, so many articles have not been

recovered as yet. So, offence punishable under Section 406 of the IPC is still continuing since no full recovery of stridhan was made during

investigation.

17. In addition, it was submitted that the provisions laid down in CrPC with regard to delay particularly mentioned in Sections 468 and 473 of the CrPC

are discretionary in nature. The Court has a power to relax such delay even for the ends of justice even if delay construed but here there is no delay

at all.

18. It was further submitted that during investigation, the Investigating Officer seized Injury Report of the opposite party no. 2 and GD Entry. Those

documents are sufficient to prove a prima facie case of torture and cruelty.

19. Finally, it was submitted that all cases registered under Section 498A of the IPC cannot be taken into account that the same is false and

fabricated. From the FIR itself, it could be revealed that she was subjected to physical and mental torture on demand of further dowry and non-

fulfilment of the same. During investigation, sufficient materials were collected against the accused persons. Therefore, charge sheet was submitted

on 22nd April, 2022 being Charge Sheet No. 68 of 2022 under Sections 498A/406/34 of the Indian Penal Code, 1860 read with Section 4 of the Dowry

Prohibition Act, 1961 against the petitioners/accused persons as such, this application is liable to be dismissed.

SUBMISSION ON BEHALF OF THE STATE:

20. Ms. Faria Hossain, learned counsel appearing on behalf of the State produced the case diary and further submitted that there are sufficient

incriminating materials collected by the Investigating Officer. The injury reports of Durba Dutta as well as de-facto complainant were seized during

investigation. From there it can be ascertained that she was physically assaulted by the accused persons. Furthermore, no full stridhan articles could

be recovered during the investigation due to non-cooperation of the petitioners. Therefore, the question of quashing of the instant proceedings does not

arise and the same is liable to be dismissed.

DISCUSSION AND FINDINGS BY THIS COURT:

21. Heard the arguments and submissions made by the learned counsels appearing for the parties and upon perusal of the record as well as case diary,

this Court finds there is no dispute that the petitioner no. 1 is the husband of opposite party no. 2. She lodged complaint against the petitioner no. 1 and

in-laws with regard to physical and mental torture for non-fulfilment of demand of dowry. She is now residing separately and took shelter in her

parental house in the month of June, 2016. She has alleged the accused persons were inflicting physical and mental torture, when she was residing in

her matrimonial home. She further alleged that her stridhan articles like ornaments and all other expensive articles have been misappropriated by the

petitioner no. 2, mother-in-law, when opposite party no. 2 was not in her matrimonial home. When she demanded her stridhan articles from her

husband and parents-in-law, every time they refused to hand over her stridhan articles lying in their custody. During investigation, some of the stridhan

articles were recovered. They did not voluntarily returned the stridhan articles even after filing a matrimonial suit by the husband against the opposite

party no. 2 seeking for divorce.

22. Her allegation against the husband and in-laws are that they inflicted mental and physical tortures upon her. The physical torture was not specified

in her complaint after June, 2016. But, there were continuous mental tortures and the scope of mental torture is not narrow but it is very wide. The

same cannot be decided only on the basis of averments made in the written complaint. Mental cruelty perpetrated upon the opposite party no. 2/wife

even after she left the matrimonial home and that was continued. She had lodged General Diary lastly on 14.06.2021. So, question of delay in lodging

complaint is not attracted in any manner.

23. It was the accusation that the petitioners had/have refused to meet up with her basic needs and necessities towards her medication, fooding,

clothing etc.

24. During investigation, sufficient incriminating materials were collected by the Investigating Officer including the injury reports of the opposite party

no. 2 and her mother against the petitioners.

25. It also appears from the case diary that the Investigating Officer also recorded statements of vital witnesses like Driver, Relatives including

opposite party no. 2. They have prima facie narrated about the torture inflicted upon her.

26. Finally, a charge sheet was submitted by the Investigating Officer after culmination of investigation on 22nd April, 2022 being Charge Sheet No.

68 of 2022 under Sections 498A/406/34 of the Indian Penal Code, 1860 read with Section 4 of the Dowry Prohibition Act, 1961 against the

petitioners/accused persons.

27. Considering the aforesaid incriminating materials available in the case diary, this Court finds prima facie case has been established against the

accused persons. In such a situation, this Court is not inclined to quash the instant proceeding because all those facts of allegations are required to be

considered after conclusion of trial.

28. The contention of the learned counsel regarding initiation of the proceedings after expiry of three years is not at all convincing and acceptable in

the present facts and circumstances of this case because she lodged a complaint on 28th December, 2021 indicating sufficient ingredients of the

offences punishable under Sections 498A/406/34 of the Indian Penal Code, 1860 and during investigation, sufficient materials were collected against

the accused persons as such, criminal proceedings, where it indicate prima facie case against the accused persons, ought not to be scuttled at the

initial stage.

29. We, should, not, forget, the, Hon'ble, Supreme, Court, in Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and

Others (2021) SCC Online SC 315 has laid down the several principles to be followed by the Court while exercising its power under Section 482 of

the Cr.P.C. or under Article 226 of the Constitution of India out of those principles, few are as follows: -

i) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the rarest of rare cases (not to be confused with

the formation in the context of death penalty).

ii) Criminal proceedings ought not to be scuttled at the initial stage;

iii) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

iv) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the Court to be more cautious. It casts an onerous and more diligent

duty on the Court;

v) While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of

the allegations made in the FIR/complaint;

vi) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation

by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would

be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of

law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file

an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

vii) When a prayer for quashing the FIR is made by the alleged accused and the Court when it exercises the power under Section 482 Cr.P.C., only has to consider

whether the allegations in the FIR disclose commission of a cognizable offence or not. The Court is not required to consider on merits whether or not the merits of

the allegations make out a cognizable offence and the Court has to permit the investigating agency/police to investigate the allegations in the FIR; and

30. The judgments referred by the learned senior counsel for the petitioners do not improve the case of the petitioners in the present facts and

circumstances of the case in hand.

31. In view of the above-mentioned facts and prima facie materials available in the case diary, this Court is of the view that the instant Criminal

Revisional application has devoid of merits.

32. Accordingly, CRR No. 2244 of 2022 is dismissed. Connected applications, if any, are also, thus, disposed of.

33. Let a copy of this Judgment be sent to the Learned Trial Court for information.

34. Case Diary, if any, is to be returned to the learned counsel appearing on behalf of the State.

35. Interim order, if any, stands vacated.

36. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.