Dr. Himabanta Bandopadhyay Vs The State of West Bengal and Another

CRR No''s. 3262 and 3578 of 2006

Court: Calcutta High Court

Date of Decision: Jan. 28, 2011

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 190, 190(1), 200, 202, 203#Hindu Marriage Act, 1955 â€" Section 13#Penal Code, 1860 (IPC) â€" Section 494, 498A#Prevention of Corruption Act, 1947 â€" Section 5(2)

Citation: (2011) 2 CALLT 158 : (2011) 2 DMC 764

Hon'ble Judges: Mrinal Kanti Sinha, J

Bench: Single Bench

Advocate: Sekhar Basu and Souvik Mitter, for the Appellant;Anvil Bhattacharjee, Ayan Bhattacharjee, Krishna Ghosh and Abhijit Kr. Adhya, for the Respondent

Final Decision: Dismissed

Judgement

Mrinal Kanti Sinha, J.
Heard learned Advocates appearing for the parties.

This revisional application u/s 401 read with Section 482 of the Code of Criminal Procedure, 1973, has been directed against the order dated

28.7.2006 passed by the learned Additional Chief Metropolitan Magistrate, Kolkata, whereby cognizance was taken regarding the commission of

offence punishable under Sections 494/498A of the Indian Penal Code by the Petitioner in connection with case No. C/670/2006.

2. It is the case of the Petitioner accused that the Petitioner met the opposite party No. 2 namely Kajal Bandopadhyay (nee De) in the year 1992

when both the Petitioner and opposite party No. 2 were lecturers of Vidyasagar University, Medinipur, and they had a love affair between them.

The opposite party No. 2 is the legally, married wife of the Petitioner and their marriage took place on 5th March, 1993 as per the provision of

Special Marriage Act, 1954 before the Marriage registrar Anta Bagchi. Out of their wedlock a male child Ananyo was born to them on

21.6.1994. Soon after marriage Petitioner realised that the opposite party No. 2 is devoid of love and affection towards her husband and other

family members and deliberately used to avoid to perform or discharge her legal and marital duty towards them, after which the Petitioner shifted to

a rented accommodation in 1995, but the opposite party No. 2 had a habit of leaving her matrimonial house without informing anybody and staying

at her parental home. Finally on 28th June, 1995, the Petitioner was forced to leave his house under constraint threat, pressure, torture and

humiliation caused by the opposite party No 2. Thereafter on 28.7.2006 the opposite party filed a petition of complaint before the learned

Additional Chief Metropolitan Magistrate, Kolkata, with the allegation or illicit relationship of the Petitioner with his students namely Chandana

Saha and Papaiya Maity and neglecting and mentally torturing the opposite party No. 2 and her minor son and with further allegation that on

18.6.2005 the Petitioner entered into matrimony with one Parama Chatterjee. On the basis of the said complaint of the opposite party No. 2 case

No. C/670/2006 under Sections 494/498A was initiated and cognizance was taken on the aforesaid bald allegations. So the Petitioner filed this

application u/s 401 read with Section 482 of the Code of Criminal Procedure, 1973, praying for quashing of the said proceeding setting aside of

the impugned order on the ground that the same and cognizance were bad in law and the present proceeding is nothing but a gross abuse of

process of Court and is barred by the law of limitation and there was no material for taking cognizance and there was no application of judicial

mind for passing the said order.

3. The Petitioner Parama Chatterjee also filed an application u/s 401 read with Section 482 of the Code of Criminal Procedure, 1973, which has

been registered as CRR No. 3262 of 2006 against State of West Bengal and the opposite party No. 2, Kajal De praying for quashing of the

proceeding in complaint case No. C/670/2006 u/s 494 and 498A of the Indian Penal Code pending in the Court of Additional Chief Metropolitan

Magistrate, Kolkata, against the Petitioner and for setting aside of the impugned order dated 28.7.2006 on the ground that in pursuance of

summons issued against her she appeared before the Court of learned Magistrate and was enlarged on bail on 4.9.2006, but the allegations as

levelled against her in the said complaint are wholly baseless and untrue, and the proceeding initiated by the opposite party No. 2 is nothing but

abuse of the process of the Court at the behest of the malicious prosecutor who seeks to wreak personal vengeance. The entire proceeding

initiated by the opposite party No. 2 is wholly illegal and bad in law and cognizance taken on the complaint required application of judicial mind

and the said proceeding is liable to be quashed.

4. Both the aforesaid matters are taken together for consideration as both the matters relate to the same matter.

5. It appears that on the basis of a written complaint filed by the opposite party No. 2 Kajal De she was examined on oath and after perusing her

petition of complaint as well as the statement of the complainant, and finding prima facie case the learned Additional Chief Metropolitan

Magistrate, Kolkata, took cognizance and issued summons against the opposite parties. For that reason the present Petitioner has prayed for

quashing of the said proceeding by filing present revisional application.

6. After issuance of summons the opposite party No. 2 appeared, but filed no affidavit-in-opposition.

7. The opposite party No. 1 the State of West Bengal has not filed any affidavit-in-opposition.

8. It is to be considered now as to whether the learned Additional Chief Metropolitan Magistrate, Kolkata, was legal correct and justified in

passing the impugned order or not, and whether there was abuse of process of the Court or not by the passing of the impugned order whereby

cognizance was taken and summons was issued against the opposite parties.

9. It has been submitted by Mr. Sekhar Basu, learned Counsel appearing for the Petitioner that taking of cognizance and issuance of summons to

the opposite parties by learned Additional Chief Metropolitan Magistrate, Kolkata, in case No. C/670/2006 under Sections 494/498A of the

Indian Penal Code was not legal and proper inasmuch as the ingredients of the offence under Sections 494/498A of the Indian Penal Code were

absent in the aforesaid complaint filed by the opposite party No. 2 in the said case and the ingredients of Sections 498A like subjecting wife to

cruelty by husband and abetting in the commission of suicide or mental and physical torture with demand of dowry were not present in the said

case and the alleged second marriage by husband must be proved, but that has not been proved and the allegation u/s 498A as well as Section

494 of the Indian Penal Code was barred by limitation inasmuch as per the allegation of the opposite party No. 2 she was deserted by the

Petitioner in May, 2003, whereas complaint was lodged on 28.07.2006 and apparently more than three years elapsed after the alleged offence,

though as per the provision of Section 468 of the Code of Criminal Procedure, 1973, such case is to be filed within three years from the date of

commission of the offence, and mere allegation that some one being Hindu has married for the second time is not enough for bringing the case

within the purview of Section 494 of the Code of Criminal Procedure and in any such second marriage it is to be proved that the ceremonies of

Hindu Marriage were duly performed, but in the instant case it has not duly been proved by evidence that the Petitioner married any one named

Smt. Parama Chatterjee for the second time and so the aforesaid proceeding against the present Petitioner by the opposite party No. 2 is liable to

be quashed and the impugned order of taking cognizance is liable to be set aside. In support of his various submissions learned Counsel appearing

for the Petitioner has relied upon the decisions reported in 2003 C CrLR (Cal)639 in the case of Abhijit Sen v. The State of West Bengal (2010)1

SCC (Cri) 1412 in the case of Shakson Belthissor v. State of Kerala and Anr. 2007 (4) CHN 491(Cal) in the case of Kanwal Ram and Others

Vs. The Himachal Pradesh Admn., in the case of Smt. Priya Bala Ghosh Vs. Suresh Chandra Ghosh, in the case of Smt. Priya Bala Ghosh v.

Suresh Chandra Ghosh.

10. Mr. Adhya, learned Counsel appearing for the opposite party No. 1, State of West Bengal has submitted that the written complaint should not

be thwarted at the initial stage unless materials do not disclose an offence and the written complaint or First Information Report shall be read as a

whole as it is neither a document which requires mathematical accuracy or nicety and before considering the prayer for quashing of complaint the

complaint should be read as a whole to ascertain whether any offence has been disclosed thereby or not. In support of his submission of the

learned Counsel appearing for the State has relied upon the decision reported in S.M. Datta Vs. State of Gujarat and Another, .

11. Mr. Amit Bhattacharjee, learned Counsel appearing for the opposite party No. 2 has contended that whether there are ingredients of an

offence under Sections 494/498A of the Indian Penal Code or not can be ascertained only after evidence is adduced and before taking evidence it

cannot be ascertained as to whether any offence has been committed or not and for the purpose of taking cognizance of a case it is to be

considered as to whether the materials in the complaint disclose any offence prima facie or not and detailed consideration of the materials of an

offence at the stage of taking cognizance is not required. At the time of taking cognizance it is only to be considered as to whether there is prima

facie material to proceed against the accused or not. When most of the offence are punishable with imprisonment for a term exceeding three years,

then the bar of limitation as provided by Section 468 of the Code of Criminal Procedure is not attracted and even if the effect of delay in instituting

the complaint is required to be determined for considering the merits of the charge, then that could only be done at the stage of trial on the basis of

evidence on record, and in case of offences which may be tried together period of limitation shall be determined with reference to the offence

which is punishable with more or most severe punishment, and the language of Sub-section (3) of Section 468 of the Code of Criminal Procedure

makes it imperative that the limitation provided for taking cognizance in Section 468 is in respect of offence charged and not in respect of offence

fully proved, and when the accused charge with two offences one is subject to limitation period of three years and there is no limitation for the

other offence punishable with a sentence of more than three years and there is no limitation for the graver offence, then the prosecution cannot take

the plea that the graver offence is also subject to limitation. In an allegation of bigamy whether there was second marriage or not can be ascertained

only after taking evidence and for the purpose of taking cognizance the complainant is not bound to prove second marriage according to law

before taking cognizance or in other words, proving second marriage before taking cognizance without taking evidence is not necessary according

to law. For all these reasons there was no legal infirmity in taking cognizance in the present case and as such there is no reason also to quash for

impugned proceeding. In support of his contentions, learned Counsel appearing for the opposite party No. 2 has relied upon the decisions

reported in (2004)6 Supreme Court cases 754 [para-6] in the case of State of Himachal Pradesh Vs. Tara Dutt and Another, [Para 4/5] in the

case of State of H.P. v. Tara Dutt and Anr. 2002 SCC (Cri) 19 [Para 6] in the case of Smt. Chand Dhawan Vs. Jawahar Lal and others, [Para

1/6/7/8] in the case of Mohinder Singh Vs. Gulwant Singh and others, [Para 3/5/11/12/13] in the case of Mohinder Singh v. Gulwant Singh and

Ors. 2010 (2) Crimes 90 (SC) [Para 1/2/3/4/5/8/9/11/12] in the case of Mohd. Hoshan and Another Vs. State of A.P., Mohd. Hoshan v. State

of A.P. (2010)1 SCC (Cri) 1466 [14-18] in the case of Undavalli Narayana Rao v. State of A.P. (2010) 2 SCC (Cri) 19 [Para 24] in the case of

G.V. Siddaramesh v. State of Karnataka (2006)1 SCC (Cri) 460 [Para 15/16] in the case of Md. Yousuf v. Afaq Jahan and 1993 SCC (Cri)

591 [Para 8] in the case of Radhey Shyam Khemka v. State of Bihar.

12. It appears that on the basis of a complaint of the opposite party No. 2 Dr. Kajal De she was examined on oath by the learned Additional Chief

Metropolitan Magistrate, Kolkata in case No. C/670/2006 on 28.7.2006 and on perusal of the petition of the complaint as well as the statement

of the complainant on S.A. cognizance was taken by the learned Additional Chief Metropolitan Magistrate, Kolkata, finding prima facie case

against the accused under Sections 494/498A of the Indian Penal Code and order was passed for issuance of summons accordingly fixing

1.9.2006 for S. R. and appearance. Summons was duly served upon the accused No. 1 but he was absent and a petition was filed praying for

time for his appearance on 1.9.2006 and on 4.9.2006 but accused No. 2 appeared and was released on bail. The accused No. 1 Dr. Himabanta

Bandopadhyay surrendered before the Court on 6.9.2006 and he was also released on bail.

13. Being aggrieved by and dissatisfied with the taking of cognizance and continuance of the impugned proceeding bearing case No. C/670/2006

under Sections 494/498A of the Indian Penal Code in the Court of the Additional Chief Metropolitan Magistrate, Kolkata, the present Petitioner

has filed this revisional application praying for quashing of the said proceeding on the ground that the taking cognizance on the basis of some bald

allegations and fabricated circumstances was bad in law and there was no application of judicial mind to the matter by the learned Court concerned

and the learned Court below was not Justified in taking cognizance, issuing summons and proceeding with the matter.

14. At the time of taking of cognizance of an offence the Court has only to see whether there is prima facie case, and whether the ingredients of

offence are there in the complaint or not. Taking of Cognizance"" means cognizance of an offence and not of ah offender. ""Cognizance"" indicates the

point when a Magistrate or a Judge takes judicial of an offence. It is entirely different thing from initiation of proceedings, rather it is the condition to

the initiation of the proceedings by the Magistrate or the Judge and cognizance is taken of cases and not of persons.

15. The provision of Section 190(1) of the Code of Criminal Procedure 1973 deals with the matter of cognizance of offence by Magistrates. So

the said provisions are to be considered. Section 190 of the Code of Criminal Procedure 1973 reads thus:

Section 190(1) subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially

empowered in this behalf under Sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

16. It appears that the instant case has been initiated upon receiving a complaint and in this case the learned Additional Chief Metropolitan

Magistrate, Kolkata, examined the complainant on oath as per the provisions of Section 200 of the Code of Criminal Procedure, 1973, and on

perusal of the petition of complaint as well as the statement of the complainant on S.A. found prima facie case under Sections 494/498A of the

Indian Penal Code and so he took cognizance and ordered issuance of summons accordingly as per the provisions of Section 204 of the Code of

Criminal Procedure, 1973, fixing a date for S.R. and appearance vide order dated 28.7.2006.

17. At the time of taking cognizance the Court is only to ascertain from allegation in the complaint or sworn statement of the complainant and his

witnesses, in case of a complaint case like the present one, as to whether there is sufficient ground for proceeding or prima facie case to proceed

against the accused or the alleged facts constitute the alleged offence or not, and not to consider the details, and come to the conclusion whether

allegation disclose any offence or those are sufficient to proceed against the accused. It has also been decided by the decision reported in S.M.

Datta Vs. State of Gujarat and Another, t that FIR ought not to be thwarted at the initial stage unless materials do not disclose an offence and FIR

or complaint shall be read as a whole and should be indicative of an offence broadly and not with mathematical accuracy and nicety and the

complaints ought not to be quashed at the initial stage unless it is termed to be an abuse of the process of the Court. The complaint in question

cannot also be so termed. It has been observed by the Hon''ble Supreme Court in the aforesaid decision that:

...We respectfully record our concurrence therewith criminal proceedings, in the normal course of events ought not be scuttled at the initial stage,

unless the same amounts to an abuse of the process of law. In the normal course of events thus, quashing of a complaint should rather be an

exception and a rarity than an ordinary rule. The genuineness of the averments in the FIR cannot possibly be gone into and the document shall have

to be read as a whole so as to decipher the intent of the maker thereof. It is not a document which requires decision with exactitude neither it is a

document which requires mathematical accuracy and nicety, but the same should be able to communicate or indicative of disclosure of an offence

broadly and in the event the said test stands satisfied, the question relating to the quashing of the complaint would not arise.

18. Mr. Sekhar Basu, learned Counsel for the Petitioner has referred to the provision of Section 498A of the Indian Penal Code in support of his

submission and has submitted that the ingredients of Section 498A like making cruel treatment or subjecting the wife to cruelty are not there either

in the complaint of the complainant or in the statement of the complainant on S. A. and there was no such willful conduct of the present Petitioner

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 (mental and

physical) of the wife or there was no such harassment of the wife where such harassment was with a view to coercing her or any person related to

her to meet unlawful demand for any dowry or property or valuable security nor the ingredients of Section 494 of the Indian Penal Code that the

Petitioner being husband married again in the instant case in which such marriage was void by reason of its taking place during the life time of his

wife, are also present either in the complaint of the complainant or in her statement on S. A. and has referred to the decision reported in Smt. Priya

Bala Ghosh Vs. Suresh Chandra Ghosh, in support of his contention that proof of solemnization of second marriage in accordance with essential

religious rites applicable to parties is a must for conviction for bigamy and mere admission by accused that he had contracted second marriage is

not enough, but Mr. Bhattacharjee, learned Counsel for the opposite party No. 2 has argued that the said points require consideration at the time

of trial after taking evidence and not at the stage of taking cognizance.

19. The provisions of Sections 498A/494 of the Indian Penal Code read thus:

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, subject 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 purposes of this section, ""cruelty"" means- (a) any willful 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.

494: Marrying again during lifetime of husband or wife.

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such

husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to

fine.

Exception. - This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of

competent jurisdiction. Nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time

of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by

such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place,

inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

So it appears that in Section 494 of the Indian Penal Code there is provision for imprisonment of seven years and fine, whereas as per the Section

498A of Indian Penal Code there is provision for imprisonment of three years and fine.

20. In this case it appears that there was averment regarding mental torture upon the opposite party No. 2 by the present Petitioner and there is

also averment to the effect that the present Petitioner deserted the opposite party No. 2, and the accused No. 1 or the present Petitioner has

married accused No. 2 on 10th June, 2005 according to Hindu Rites and Ceremonies while the opposite party No. 2 as his wife is still living, as

per the petition of complaint as well as the statement of the opposite party No. 2 on S.A., and finding prima facie case or ground for proceeding

learned Additional Chief Metropolitan Magistrate, Kolkata took cognizance and issued summons to the accused persons accordingly, and the

learned Additional Chief Metropolitan Magistrate has also mentioned in his order dated 28.7.2006 that on examination of the complainant on oath,

perusal of the complaint as well as of the statement of the complainant on S.A. he found that prima facie case under Sections 494/498A was made

out against the accused and so he took cognizance and ordered issuance of summons accordingly. Apparently there were some materials before

the learned Magistrate concerned for taking cognizance and proceeding further and issuing summons against the accused Petitioner under the

aforesaid sections of law.

21. It has been held by the decision reported in (2010) 1 SCC (Cri) 1466 in the case of Undavalli Narayan Rao v. State of A.P. that:

...15 ""Cruelty"" has been defined by the Explanation added to the section itself. The basic ingredients of Section 498A IPC are cruelty and

harassment....

16. In S. Hanumantha Rao v. S. Ramani this Court considered the meaning of cruelty in the context of the provisions u/s 13 of the Hindu Marriage

Act, 1955 and observed that: (SCC p. 624 para 8).

8. ...Mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between

the wife and the husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words,

the party who has committed wrong is not expected to live with the other party.

17. In V. Bhagat v. D. Bhagat this Court while dealing with the issue of cruelty in the context of Section 13 of the Hindu Marriage Act observed as

under: (SCC pp. 347 & 349 paras 16 -17).

16. ...It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the Petitioner. While arriving at such conclusion,

regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever

living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out

exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to

the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were

made.

22. In the instant case there is allegation in the revisional application of the Petitioner that the opposite party No. 2 had a habit of living her

matrimonial house without informing Anybody and staying at parental home for an indefinite period and in spite of request of the Petitioner the

opposite party No. 2 paid no attention to such request, but in her complaint the opposite party No. 2 has stated that herself and her child started

residing with the widow mother of the opposite party No. 2 for that and has alleged of mental torture upon her. In her complaint she also stated

about a fact that she has been deserted by her husband and she is living apart from her husband with her child. In view of the above noted decision

this may prima facie be treated as mental cruelty when either party causes mental agony or suffering of such a magnitude that it severs the bond

between the wife and husband as a result of which it becomes impossible for the party who has suffered to live with the other party to live with him,

and the party who has committed wrong is not expected to live with the other party and it is not necessary to prove that the mental cruelty is such

as to cause injury to the health of the opposite party No. 2, and when both the parties are living apart then that also may prima facie be treated as

mental cruelty because due to some willful conduct of the Petitioner the opposite party No. 2 was compelled to live apart from the Petitioner, but

whether opposite party No. 2 was really subjected to mental cruelty or not is a matter of evidence and trial.

23. Though it has been alleged on behalf of the Petitioner with reference to the decision reported in Binoy Kumar Gupta Vs. Leela Gupta and

Another, , (Paras 10, 11) that unless there are prima facie materials disclosing elements of Section 494, IPC, in the complaint as well as in the

statements of witnesses u/s 200 of the Cr PC process cannot be issued and there is no evidence that two of the essential ceremonies like

''Dattahoma'' and ''Saptapadi'' have been performed and so the second marriage by the Petitioner has not been proved and the onus is upon the

opposite party No. 2 to prove that the Petitioner has married for the second time and required essential ceremonies of marriage have been

observed, yet it has been decided by the decision reported in 2010 (2) Crimes 90 (SC) in the case of K. Neelaveni v. State Rep. By Insp. of

Police and Ors., in para 8 that:

Truthfulness or otherwise of the allegation is not fit to be gone into at this stage as it is always a matter of trial. Essential Ceremonies of the

Marriage were gone into or not is a matter of trial.

24. It has also been held by the decision reported in AIR 2002 SCC (Cri) 19 (Para 6) in the case of M. Krishnan v. Vijay Singh and Anr. that:

6. Where factual foundations for the offence have been laid down in the complaint, the High Court should not hasten to quash criminal proceedings

merely on the premise that one or two ingredients have not been stated with the details or that the facts narrated reveal the existence of commercial

or money transaction between the parties.

25. It has been held by the decision reported in Mohd. Hoshan and Another Vs. State of A.P., . that:

6. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a

person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the

environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage

or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the metal cruelty

was established or not.

26. As such in view of the above noted decisions it appear that whether case of cruelty or bigamy was established or not is a matter of evidence

and they can be determined only after taking evidence at the time of trial and not before that, and at the initial stage immediately after filing of the

complaint it is to be seen as to whether the complaint disclosed any offence or not, and if the complaint disclosed any offence then the Magistrate

concerned can take cognizance of the same as per the provision of Section 190(1)(a) of the Code of Criminal Procedure, 1973, subject to the

provisions of the Chapter XIV and any Magistrate of the first class, or any Magistrate of the second class specially empowered in this behalf, may

take cognizance upon receiving the complaint of facts which constitute such offence. In case of a complaint case there is provision for examination

upon oath of the complainant when a Magistrate takes cognizance of an offence on complaint and the witnesses present, if any. Relevant provision

of Section 200 of the Code of Criminal Procedure, 1973, reads thus:

Section 200. Examination of Complainant.-A magistrate taking cognizance of on offence on complaint shall examine upon oath the complainant

and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the

witnesses, and also by the Magistrate....

In this case it appears that the learned Additional Chief Metropolitan Magistrate, Kolkata, examined the complainant Kajal De on oath and

perusing the petition of complaint as well as statement of the complainant and finding prima facie case took cognizance as no other witness was

present as apparent from her order dated 28.7.2006 and ordered issuance of summons accordingly fixing date for S.R. and appearance.

27. In the decision reported in Mohinder Singh Vs. Gulwant Singh and others, it has been observed by the Hon''ble Supreme Court in the case of

Mohinder Singh v. Gulwant Singh and Ors. that

...11. This Court as well as various High Courts in a catena of decisions have examined the Code and settled the principles of law, the substance of

which is as follows:

The scope of enquiry u/s 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to

determine whether process should issue or not u/s 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of

the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if

any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued u/s 204 of the

Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused

person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage

of the enquiry contemplated u/s 202 of the Code. To say in other words, during the course of the enquiry u/s 202 of the Code, the Enquiry Officer

has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed

accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry....

28. Mr. Basu, learned Counsel for the Petitioner, contended that though in the petition of the complaint more than 8 witnesses have been cited in

the list of witnesses, yet no other witness was present nor any witness besides the complainant was examined by the learned Magistrate concerned

before taking cognizance. On the other hand Mr. Bhattacharjee, learned Counsel for the opposite party No. 2, argued that it was not obligatory on

the part of the complainant to examine all her witnesses or other witnesses at the time of filing complaint or taking cognizance as that is not the

requirement of Section 200 of the Code of Criminal Procedure.

29. It appears that as per the provision of Section 200 of the Code of Criminal Procedure, 1973, a Magistrate taking cognizance of an offence on

complaint shall examine upon oath the complainant and the witnesses present, if any, which means that the witnesses of the complainant who

remain present at the time of examination of the complainant oath only will have to be examined, but that does not mean that all the witnesses listed

in the complaint of the complainant must have to be examined on oath or their presence would have to be secured by any means for their

examination before taking cognizance in the case. It appears from the impugned order that besides the complainant no other witness was present,

and as such non-examination of any other witnesses is not such a defect for which the complaint of the complainant is to be quashed, specially

when learned Magistrate concerned being satisfied with the examination of the complainant only found that there was prima/arte case or ground for

proceeding against the accused, for which reason he took cognizance and issued summons to the accused and there was no irregularity or illegality

in the same.

30. Mr. Basu, learned Counsel for the Petitioner has referred to the provision of Section 468 of the Code of Criminal Procedure, 1973, and has

submitted that the offence u/s 498A is punishable with imprisonment for a term which may extend to three years and also with fine, and in such

case as per the provision of Section 468(2)(c) of the of the Code of Criminal Procedure, 1973, the period of limitation shall be three years if the

offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. But in this case as per the complaint of the

opposite party No. 2 she was allegedly being tortured mentally and financially since after May, 2003, but she filed the complaint in the Court more

than three years after therefrom on 11.10.2006, and as such the cognizance of the offence u/s 498A was barred by limitation as per the provision

of Section 468(2)(c). But Mr. Bhattacharjee, learned Counsel for the opposite party No. 2, has contended that there is allegation of offence u/s

494 of the Indian Penal Code also in this case, which is punishable with imprisonment for a term of seven years and fine, and as per the provisions

of Section 468(3) the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence

which is punishable with more severe punishment or, as the case may be, the most severe punishment and as such taking cognizance of the said

offences by the learned Magistrate concerned was not barred by limitation.

31. Learned Counsel for the Petitioner has raised the point of bar of limitation with regard to the alleged offence u/s 498A of the Indian Penal

Code as per the provision of Section 468(2)(c) of the Code of Criminal Procedure, but as per the provisions of Section 468(3) of the Code of

Criminal Procedure, 1973, period of limitation in relation to offences which may be tried together shall be determined with reference to the offence

which is punishable with more severe punishment or, as the case may be, the most severe punishment. The provisions of Section 468 of the Code

of Criminal Procedure Code, 1973, reads thus:

Section 468 ""Bar to taking cognizance after lapse of the period of limitation.- (1) Except as otherwise provided elsewhere in this Code, no Court,

shall take cognizance of an offence of the category specified in Sub-section (2), after the expiry of the period of limitation,

(2) The period of limitation shall be -

(a) Six months, if the offence is punishable with fine only;

(b) One year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section the period of limitation, in relation to offences which may be tried together, shall be determined with reference

to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.)

32. It has been held by the decision reported in State of Himachal Pradesh Vs. Tara Dutt and Another, . that:

...5. The plain and unambiguous language of the aforesaid provision of the Code of Criminal Procedure makes it crystal clear that under Sub-

section (2) (a) of Section 468 where the offence with which the accused is charged is punishable with fine only, the prosecution must be launched

within six months from the date of commission of the offence. Similarly, under Sub-section (2) (b) of Section 468, the period of limitation is one

year if the offence is punishable with imprisonment for a term not exceeding one year and under Sub-section (2) (c) of the said section where the

offence charged is punishable with imprisonment for a term exceeding one year but not exceeding three years, then the period of limitation

provided is three years for taking Cognizance. Sub-section (3) of Section 468 which was added by the Code of Criminal Procedure (Amendment)

Act, 1978, provides that in relation to offences which may be tried together, the period of limitation shall be determined with reference to the

offence which is punishable with the more or most severe punishment. The language of Sub-section (3) of Section 468 makes it imperative that the

limitation provided for taking cognizance in Section 468 is in respect of the offence charged and not in respect of offence finally proved. This being

the position, in the case in hand, when the Respondents were charged u/s 468 read with Section 120-B, for which the imposable punishment is

seven years and Section 5(2) of the Prevention of Corruption Act, 1947, which is punishable with imprisonment for a term which may extend to

seven years and for such offences no period of limitation having been provided for in Section 468, the cognizance taken by the learned Special

Judge cannot be said to be barred by limitation.

33. It has also been held by the decision reported in Harnam Singh Vs. Everest Construction Co. and Others, . that:

...6. We are unable to perceive any legal basis for the observation quoted above. The bar against cognizance after the lapse of the prescribed

period of limitation is laid down u/s 468 Cr PC. It is within the parameters of that provision that the Court called upon to take cognizance of the

offence should act. Most of the offences alleged against the Respondents viz. Sections 420, 467, 471 and 474 IPC are punishable with

imprisonment for a term exceeding three years and, therefore, as contended by the learned Counsel for the Appellant, the bar of limitation u/s 468

is not attracted. The complaint cannot, therefore, be thrown out at the threshold on the ground of limitation. If, apart from the question of limitation,

the effect of delay, if any, in instituting the complaint is necessary to be determined for considering the merits of the charge, that can only be done at

the stage of trial on the basis of the evidence on record. Obviously, the High Court did not bear in mind the explicit provision contained in Section

468 and the allied provisions of Chapter XXXVI of the Criminal Procedure Code.

34. It has been decided by the decision reported in 2003 C Cr LR (Cal) 639 in the case of Shri Abhijit Sen v. The State of West Bengal in Para

15 that:

...The essence of the offence in Section 498A is cruelty as defined in the explanation appended to that Section. It is continuing offence and on each

occasion on which the Respondent was subjected to cruelty, she would have a new starting point of limitation.

As per Mr. Bhattacharjee, learned Counsel for the opposite party No. 2 when there was allegations under a graver offence or Section 494 of the

Indian Penal Code also against the accused, then such provision of limitation would not be applicable in this case.

35. In the instant case it appears that though the alleged offence u/s 498A of the Indian Penal Code is punishable with imprisonment for three years

yet the alleged offence u/s 494 of the Indian Penal Code is punishable with imprisonment of seven years, and no period of limitation has been

prescribed in Section 468 of the Code of Criminal Procedure for the alleged offence u/s 494 of the Indian Penal Code. In view of the decisions

noted above it cannot be said that cognizance was taken in the instant case after lapse of period of limitation or there was any bar as per the

provision of law of Section 468 of the Code of Criminal Procedure to the taking of cognizance in this case or cognizance was taken after the

expiry of the period of limitation.

36. So it appears from the above noted discussion that the points whether the opposite party No. 2 was subjected cruelty by the Petitioner or

whether the Petitioner married for the second time during the life time'' of his legally married wife or the said second marriage was void accordingly

should be considered during trial after evidence is taken and not at the initial stage of taking cognizance, and taking cognizance in the said case was

not barred by the provision of Section 468 of the Code of Criminal Procedure or any other law and examination of all the listed witnesses is not

necessary and the examination of the complaint himself or herself may be sufficient for consideration by the learned Magistrate concerned for

taking cognizance on a complaint of the complainant and as such learned Magistrate has not done any illegality or irregularity in taking cognizance

in the said case and ordering issuance of summons against the accused nor she was legally wrong in her approach to the case at the time of taking

cognizance and proceeding with the case. There was also no abuse of process by the Court in taking cognizance or issuing process against the

accused in the said case. As such quashing of the said proceeding in this revisional jurisdiction would not be legal, correct and justified inasmuch as

the learned Magistrate concerned was not illegal, incorrect or unjustified in passing the impugned order.

37. It has also been held by the Hon"ble Court in the decision reported in the 1993 SCC (Cri) 591 [Para 8] in case of Radhey Sham Khemka

and Anr. v. State of Bihar that:

... This Court has repeatedly pointed out that the High Court should not, while exercising power u/s 482 of the Code usurp the jurisdiction of the

trial Court. The power u/s 482 of the Code has been vested in the High Court to quash a prosecution which amounts to abuse of the process of

the Court. But that cannot be exercised by the High Court to hold a parallel trial, only on basis of the statements and documents collected during

investigation or inquiry, for purpose of expressing an opinion whether the accused concerned is likely to be punished if the trial is allowed to

proceed.

38. It has also held by the Hon"ble Supreme Court in the decision reported in Smt. Chand Dhawan Vs. Jawahar Lal and others, that:

... This Court has in various decisions examined the scope of the power u/s 482, Cr PC, and has reiterated the principle that the High Court can

exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the complaint do not constitute an offence or

that the exercise of the power is necessary either to prevent the abuse of the process of the court or otherwise to secure the ends of justice. No

inflexible guidelines or rigid formula can be set out and it depends upon the facts and circumstances of each case wherein such power should be

exercised. When the allegations in the complaint prima facie constitute the offence against any or all of the Respondents in the absence of materials

on record to show that the continuance of the proceedings would be an abuse of the process of the Court or would defeat the ends of justice, the

High Court would not be justified in quashing the complaint.

39. It has been held by the decision reported in Mohinder Singh Vs. Gulwant Singh and others, that where prima facie case has been made out

and process is issued by the Magistrate the High Court should not exercise its power u/s 482 of the Code of Criminal Procedure, 1973, and

cannot quash proceedings.

It has also been decided by the decision reported in Binoy Kumar Gupta Vs. Leela Gupta and Another, that it is well settled law that if the Court

finds that the prosecution case could be established on the basis of a sole witness then the power of High Court of quashing criminal proceeding is

to be sparingly used, and exercise of the power could only be made in order to prevent miscarriage of justice and abuse of process of the Court.

40. It has also been held by the decision reported in Dhanalakshmi Vs. R. Prasanna Kumar and Others, that:

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of

Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the

complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the

offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers u/s 482. It

is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in

conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath

of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide frivolous or

vexatious, in that event there would be no justification for interference by the High Court.

41. In the instant case it does not appear that the allegation made in the complaint do not constitute an offence or the exercise of the power u/s 482

of the Code of Criminal Procedure, 1973, is either necessary to prevent any abuse of process of the Court or secure ends of justice otherwise,

and if prior to the appearance of the accused and explaining the substance of accusation and recording his plea the impugned proceeding is

quashed by an order, then that order would be wholly perverse and would result in miscarriage of justice as that would be the prejudging of the

whole issue without trial of the accused, and it has been so held by the Hon''ble Supreme Court in the decision reported in Sewakram Sobhani Vs.

R.K. Karanjia Chief Editor, Weekly Blitz and Others, The facts and circumstances of some other decisions relied upon by the learned Advocates

for the parties and the facts and circumstances of the present case are not similar and so those are not applicable in this case.

42. Having regard to the submissions of the learned Counsels for the parties, materials on record, the above noted decisions and other

circumstance; it appears that there was no illegality, irregularity or incorrectness in taking cognizance in the said case by the learned Magistrate

concerned on the basis of the complaint and statement of the complainant on oath, and issuance of summons against the accused and proceeding

with the case, nor it can be said that the allegations made in the complaint do not constitute an offence, nor it can be said that the said complaint

was frivolous, vexatious or oppressive or the exercise of the power u/s 482 is necessary to prevent any abuse the process of the Court or the

otherwise securing the ends of justice nor it can be said that the impugned order of the learned Additional Chief Metropolitan Magistrate, Kolkata,

was not legal, correct and justified. Rather it appears that the impugned order dated 28.07.2006 passed by the learned Additional Chief

Metropolitan Magistrate, Kolkata in case No. C/670/2006 was legal, correct and justified. As such there is no reason to interfere with the

impugned order nor there is any reason to quash the impugned proceedings.

43. As such there is no reason to interfere with the impugned order passed by the Additional Chief Metropolitan Magistrate, Kolkata in complaint

case No. C/670/2006 on 28.7 2006. Accordingly CRR No. 3578 of 2006 and CRR No. 3262 of 2006 stand dismissed.

44. Interim order of stay stands vacated.

45. It made clear that this Court has not gone into the merits of the case and every thing in that regard is kept open.

46. The Lower Court record along with a copy of this judgment be sent to the learned Additional Chief Metropolitan Magistrate, Kolkata for

information with a direction to proceed with the said case according to law expeditiously.

Urgent xerox certified copy of this judgment, if applied for, be supplied to the parties expeditiously.