

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 4132 of 2023

Amitava Ghosh & Another

Versus

The State of West Bengal & Another

For the Petitioners	:	Mr. Sourav Mondal, Adv. Mr. Abhirup Halder, Adv. Mr. Rany Mondal, Adv.
For the Opposite Party No. 2	:	Mr. Lakshminath Bhattacharjee, Adv. Mr. Dipam Mozumder, Adv. Mr. Banshi Badan Maity, Adv.
For the State	:	Mr. Rudradipta Nandy, Ld. APP Mr. Manoranjan Mahata, Adv.
Heard on	:	17.04.2025
Judgment on	:	30.04.2025

Ajay Kumar Gupta, J:

1. The petitioners filed an application under Section 482 of the Code of Criminal Procedure, 1973 (in short 'CrPC') seeking for quashing of the proceeding arising out of Chakdah Police Station Case No. 313 of 2023 dated 16.05.2023 under Sections 498A/325/34 of the Indian Penal Code, 1860 corresponding to G.R. Case No. 1371 of 2023 and Charge Sheet being No. 359/2023 dated 31.05.2023 filed under Sections 498A/325/34 of the Indian Penal Code, 1860 as well as all orders passed therein pending before the Court of the Learned Additional Chief Judicial Magistrate, Kalyani, Nadia.

2. The brief facts of the case are relevant for the purpose of disposal of this case as under: -

2a. Petitioner no. 1 is the father-in-law and petitioner no. 2 is the sister-in-law of the opposite party no. 2. On 16.05.2023, the opposite party no. 2/complainant lodged a written complaint before the Inspector-in-Charge, Chakdah Police Station, *inter alia*, alleging that she got married with one Saumyadip Ghosh according to Hindu Rites and Customs about 3 years ago. She gave birth of one male child. Subsequently, she was tortured physically and mentally by her husband, father-in-law and sister-in-law. She further alleged that she

was forced not to have any sort of contacts with her parental home, as such the opposite party no. 2 started living in Nadia with her husband and child. But, suddenly on 15.05.2023 at about 6:00-6:30 pm, the husband of the opposite party no. 2 assaulted her physically with instigation of petitioners resulting in registration of an FIR being Chakdah Police Station Case No. 313 of 2023 dated 16.05.2023 under Sections 498A/325/34 of the Indian Penal Code, 1860.

2b. After conclusion of investigation, the Investigating Officer submitted a Charge Sheet being No. 359/2023 dated 31.05.2023 under Sections 498A/325/34 of the Indian Penal Code, 1860 against the petitioners and husband of the opposite party no.2 though the contention of the Petitioners is that petitioners are innocent and in no way involved in the offence as alleged by the opposite party no. 2. The allegation against the petitioners is out and out false, frivolous and fabricated. Petitioner no. 1 is a senior citizen presently aged about 80 years and petitioner no. 2 is a married lady residing permanently with her husband in her matrimonial home. Opposite party no.2 and her husband are residing in Nadia after their marriage. Opposite party no. 2 never resided in the in-laws house.

2c. The FIR has been lodged to pressurise the petitioners only to grab one storied residential building standing on a land measuring an area about 2 Kathas and same was constructed by the mother-in-

law, since deceased. A suit for partition being Title Suit No.341 of 2023 is pending before the Learned 2nd Civil Judge, (Sr.) Division at Baruipur. Hence, this application.

SUBMISSION ON BEHALF OF THE PETITIONERS:

3. Mr. Mondal, learned counsel along with others representing the petitioners submitted that whatsoever allegations levelled against the petitioners are false and frivolous. The allegations made by the opposite party no. 2 are out and out false. Opposite party no. 2 has not disclosed any specific overt act played by the petitioners.

3a. It was further submitted that the opposite party no. 2 has made allegations of physical and mental torture by the father-in-law and sister-in-law without residing in her matrimonial home. She is residing in a different place i.e. in Nadia far from the Matrimonial home. She does not disclose particular time and date of alleged physical and mental tortures. The allegations are omnibus and general in nature as such the proceeding started thereof is an abuse of process of law. Hence, the proceeding is liable to be quashed.

4. None appears on behalf of the opposite party no. 2 at the time of call. No accommodation was sought for.

SUBMISSION ON BEHALF OF THE STATE:

5. Learned counsel appearing on behalf of the State produced the case diary and further submitted that during investigation, sufficient materials were collected against the present petitioners and a prima facie case has been established under Sections 498A/325/34 of the IPC against the present petitioners. Accordingly, a Charge Sheet being No. 359/2023 dated 31.05.2023 under Sections 498A/325/34 of the Indian Penal Code, 1860 has been filed against accused persons. After going through the materials collected during investigation, the Learned Court below took cognizance and initiated proceeding against the present petitioners. Therefore, this Criminal revisional application has no merits and is liable to be dismissed.

DISCUSSION AND FINDINGS BY THIS COURT:

6. 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 the allegations made against the petitioners are general and omnibus. No specific date and time are mentioned with regard to the physical torture or any other types of torture or assault. Specific allegation, however, appears against her husband to the effect that she was assaulted by her husband on 15.05.2023 at 6:00-6:30 pm. It was alleged that her husband

assaulted her on the instigation by the Petitioners. However, no manner, date and time mentioned either in the complaint or statements recorded under Section 161 of the CrPC regarding instigation by the petitioners.

7. To constitute the offence under Sections 498A/325/34 of the IPC, some essential ingredients are required to be fulfilled. It would be appropriate and convenience to refer the Sections and their essential ingredients for proper adjudication of this case. To ascertain the same, this Court would like to refer the Sections and their ingredients for ready reference and appropriate decisions of this case as under: -

S. 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 purposes 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:

(a) The woman must be married;

(b) She must be subjected to cruelty or harassment; and

(c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

(d) Cruelty may be physical, mental, emotional and financial harassment that endanger woman's health or life.

S. 325. Punishment for voluntarily causing grievous hurt:- *Whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

Ingredients:

(i) That the accused caused grievous hurt to any person;

(ii) That such hurt was caused voluntarily;

(iii) That such a case was not provided for by section 335 of the Indian Penal Code, 1860.

S. 34 reads as follows:

Acts done by several persons in furtherance of common intention. —When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

Ingredients:

To establish joint liability under Section 34 of the Indian Penal Code (IPC), the prosecution must prove that a criminal act was committed by several persons in furtherance of a common intention.

8. Upon perusal of the aforesaid sections, ingredients and case record, it appears that the marriage between the son of petitioner no. 1 and opposite party no. 2 has taken place about three years ago from the date of lodging complaint. She gave birth of a male child

from the said wedlock. She alleged that her husband, father-in-law and sister-in-law used to torture physically and mentally after the birth of a child at her matrimonial home but no specific reason for such torture has been disclosed.

9. It is admitted facts that she is residing with her husband in Nadia, where she lodged complaint. The said place is far away from her matrimonial home and is situated in another district. She alleged that about the incident of assault by her husband on 15.05.2023, when she was residing in the Nadia with her husband and child. Be that as it may, she alleged the incident of tortures by the petitioners without any specific time and date and further failed to specify the details of the torture inflicted by the petitioners. No specific role or overt act has been attributed against the Petitioners. Mere allegations of physical and mental torture inflicted by the Petitioners are insufficient to initiate proceeding against the present petitioners, when she resides separately from the Matrimonial home.

10. Upon careful perusal of the written complaint, it reveals that allegations against the Petitioners are vague. No specific or particulars of date, time and manner of torture have been disclosed. Furthermore, during investigation, it does not prove that her father-in-law or sister-in-law tortured her. No specific role or reasons has been disclosed by opposite party no. 2 with regard to torture either

physically or mentally. No demand whatsoever made by the petitioners even then charge sheet has been submitted by the Investigating Officer against the petitioners. During investigation, the Investigating Officer recorded the statements under Section 161 of CrPC of available witnesses. From the perusal of the statements, it reveals that upon instigation of the Petitioners, her husband assaulted her on 15.05.2023 but without details of instigation of the petitioners.

11. This Court also does not repose confidence about the allegations, levelled by the opposite party no. 2/wife against the petitioners rather it appears the accusations made by the opposite party no. 2/wife are general, omnibus in nature and also not distinct.

12. Furthermore, a suit for partition being Title Suit No.341 of 2023 is pending before the Learned 2nd Civil Judge, (Sr.) Division at Baruipur amongst the family members. The petitioners are residing separately in another district. Sister-in-law is married and resides in her matrimonial home under Mahestala Police station.

13. The charge sheet has not revealed any evidence even to establish a prima facie case against the Petitioners herein. Therefore, this Court is of the opinion that if such proceedings continue against the petitioners, the conviction of petitioners appears bleak and

remote. To secure the ends of justice, the proceedings are deserved to be quashed under the inherent power granted under Section 482 of the CrPC insofar as the petitioners are concerned.

14. We should not forget at this moment the well-settled Law declared by the Hon'ble Supreme Court in the case of ***State of Haryana & Ors. vs. Bhajanlal & Ors.***¹. The Hon'ble Supreme Court has laid down the basic points for consideration in pursuant to which a complaint may be entertained in accordance with law before a Court of law. The Court has narrated down as to when the extraordinary power of this Court under Section 482 of the Code of Criminal Procedure may be espoused. Relevant portion thereof may beneficially be quoted herein below: -

“102. This Court in the backdrop of interpretation of various relevant provisions of CrPC under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the

¹ AIR 1992 SUPREME COURT 604 : 1992 Supp. (1) Supreme Court Cases 335

court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is

permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

15. In the light of above discussions and in view of observation made by the Hon’ble Supreme Court in the above cited judgment, this

Court fully satisfies that this case falls in the Categories mentioned in (1), (3) and (5) above.

16. Accordingly, **CRR 4132 of 2023** is, thus, **allowed**.

Connected applications, if any, are also, thus, disposed of.

17. Consequently, the proceeding arising out of Chakdah Police Station Case No. 313 of 2023 dated 16.05.2023 under Sections 498A/325/34 of the Indian Penal Code, 1860 corresponding to G.R. Case No. 1371 of 2023 and Charge Sheet being No. 359/2023 dated 31.05.2023 under Sections 498A/325/35 of the Indian Penal Code, 1860 pending before the Court of the Learned Additional Chief Judicial Magistrate, Kalyani, Nadia are hereby quashed insofar as the petitioners herein are concerned and all orders passed therein against the present petitioners are also set aside.

18. Let a copy of this Judgment be sent to the Learned Court below for information.

19. Interim order, if any, stands vacated.

20. Case Diary, if any, be returned to the learned counsel for the State.

21. Parties shall act on the server copies of this Judgment uploaded on the official website of this Court.

22. 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.

(Ajay Kumar Gupta, J)

Later:

The learned counsel appearing on behalf of the opposite party no. 2 submits that the opposite party no. 2 was unaware about the listing and conclusion of hearing of this matter. Though, he admits that a Vakalatnama has already been filed on behalf of the opposite party no. 2. He prays for stay of this Judgment and Order for a limited period. Prayer for stay is considered and rejected.

(Ajay Kumar Gupta, J)