

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR.JUSTICE AJOY KUMAR MUKHERJEE

CRR 1382 of 2018

Vargab Mallik & Ors.

Vs.

The State of West Bengal & Anr.

For the Petitioners : Mr. Saibal Basu

For the State : Ms. Sreyasi Biswas

Heard on : 24.06.2025

Judgment on : 01.07.2025

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioners herein have sought for quashing of the proceeding being GR case no. 1495 of 2012 presently pending before learned ACJM at Barasat, corresponding to Barasat P.S. Case No. 508 of 2012 dated 20.03.2012 under section 498A/406/323/34 IPC.

2. The petitioner no.1 is the husband of the *de facto* complaint and petitioner No. 2 is the mother of petitioner no.1 and petitioner No. 3 is the sister of petitioner no. 1. Petitioners contention is that petitioner no.1 being the husband, filed matrimonial suit before the Barasat court being Mat Suit no. 21 of 2012, seeking dissolution of matrimonial relationship between the parties herein. As soon as the opposite party/complainant came to know

about such filing of divorce suit by the petitioner no.1, in order to wreck vengeance, she filed the instant complaint with baseless allegation against the petitioners under section 156 (3) of Cr.P.C., wherein the court below, without applying judicial mind directed the police to start investigation. In fact after receipt of notice of divorce suit filed by petitioner No.1, she not only lodged the present complaint but also filed another complaint case no.590 of 2012 under section 12/18/19/20/21/22, of Protection of Women from Domestic Violence Act., 2005. Aforesaid proceeding alleging domestic violence under Act. of 2005, subsequently got dismissed for default.

3. Being dissatisfied with the impugned criminal proceeding Mr. Basu, Learned Counsel for the petitioner submits that though *de facto* complainant in her evidence before court specifically admitted that her husband never tortured her and that her union with her husband usually used to take place at an interval of around three months and though she voluntarily decided not to proceed with the case of domestic violence, but surprisingly she has instituted the present proceeding only to harass the petitioner and his mother and sister and as such instant proceeding is liable to be quashed.

4. The opposite party/*de facto* complainant opposite party no.2 is not represented.

5. Learned counsel appearing on behalf of the State placed the case diary and leaves the prayer made by the petitioner for the discretion of the court.

6. I have gone through the allegations levelled in the FIR, wherefrom it appears that evasive allegations have been made against the petitioner No.1 and his mother and sister. After going through the contents of the FIR as it

stands, does not disclose specific allegation against accused more so against the co accused, specially in a matter arising out of matrimonial bickering. FIR does not disclose specific allegation which would persuade the court to take cognizance of the offence alleged against the petitioners and they are prima facie not found indulging in physical or mental torture to the FIR maker/ wife.

7. Now though the petitioners were initially booked under section 406 IPC also but after completion of investigation police dropped section 406 from the charge, noting that investigating authority did not attempt to recover stridhan property as because no such stridhan property gifted at the time of marriage. So, at this stage for the disposal of the present application, it is required to be answered by this court whether any allegation under section 498A or 323 of IPC has been made out or not against the petitioners during investigation.

8. Section 498A of the IPC reads as follows:-

Section 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.]

9. In view of above provisions of law, it is quite clear that said section is applicable only to such a case where the husband or the relative of a woman subjects the said woman to cruelty. The said section also contains explanation to define “cruelty”, which states that there must be such a conduct on the part of the husband or relative of the husband of the victim, which is of such a nature as to cause the women to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical, of the women.

10. Now when I examine the materials collected so far during investigation including the petition of complaint of the present case, it appears that there is no such allegation either in the FIR or in the charge sheet making out a prima facie case as narrated under the aforesaid explanation i.e. allegation that there was any such conduct on the part of the petitioners, which could be said to be amounting to cruelty of such a nature as is likely to cause the victim/opposite party no.2 to commit suicide or to cause any injury to her life. Accordingly it is clear that the ingredients to constitute an offence under explanation (a) of section 498A IPC are not at all mentioned either in the FIR or in the charge sheet and in absence thereof, no case has been made out.

11. Now so far as explanation (b) of section 498 of IPC is concerned it appears that in order to constitute ‘cruelty’ under explanation (b) of the said section there has to be harassment of the women with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or a case is to be made out to the effect that there is a failure by her or any person related to her to meet such demand. When the allegations made in the FIR and also the materials available in the case

diary including the charge sheet is examined in the context of present case, in the light of said provision, I find no prima facie case under the provision of section 498A to attract a case of 'cruelty'.

12. Except the bald statement that the petitioners had harassed the *de facto* complainant, citing instances of some matrimonial discord, nothing else indicating their involvement in the crime under section 498A IPC has been made. Moreover, the *de facto* complainant herein deposed in Matrimonial Suit no. 21 of 2012 wherein she has clearly admitted in evidence dated 2nd August, 2019 that her union with her husband usually used to take place at an interval of around three months and she categorically admitted further that she was not tortured by her husband ever. It is also surprising that while adducing evidence in the aforesaid matrimonial proceeding, the *de facto* complainant herein even could not recollect that she initiated the instant criminal proceeding against the present petitioners. In her evidence dated 22.11.2019 in the said divorce proceeding, she has stated that she cannot remember whether she came to Barasat court earlier except in connection with the said matrimonial suit and she also could not remember about initiation of the instant proceeding. She categorically stated that she never filed any complaint under section 156(3) of the Cr.P.C. being C 575 of 2012. Not only that she further stated that may be her lawyer obtained her signatures on some papers, which have been used to start instant criminal proceeding, but she has no idea about that case.

13. Now so far as the allegation u/s 323 IPC is concerned it is only stated in the complaint that the petitioner No. 2 & 3 had inflicted physical and

mental torture upon her when she used to stay with them. Needless to say that in order to lodge a proper complain, mere mentioning of the section is not sufficient but what is required to be brought to the notice of the court, is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing the offence of causing bodily pain, deceased or infirmity to the victim. When I examined the complaint and the charge sheet, allegation is sadly vague and it does not disclose on which date and at what time the petitioner No. 2 & 3/accused have committed any such offence nor it states what is the exact role played by each of the petitioners in the commission of offence of allegedly causing hurt to the *de facto* complainant.

14. It is well settled that the extraordinary power under section 482 of the Code of Criminal Procedure can be exercised by the High Court either to prevent abuse of process of the court or otherwise to secure the ends of justice. In the present case allegations made in the FIR /complaint as well as the outcome of the investigation, as available in the case diary, even if are taken at their face value and accepted in their entirety, do not prima facie constitute offence either under section 498A or under section 323 of IPC against any of the petitioners. It is true that while considering a prayer for quashing a criminal proceeding, the High Court is not supposed to look into the documents relied by the accused persons unless they are tested during evidence but at the same time the High Court can place reliance upon such documents furnished by the accused, which are of sterling quality and /or are impeachable. In the present case the documents relied by the petitioner relates to evidence adduced by the complainant as referred above which are

impeachable in character. An overall analysis of said documents and materials collected during investigation clearly suggests that the allegation of “cruelty” under section 498A or the allegation of “causing voluntary hurt” under section 323 against the petitioners are imaginary and has been created as a counter blast measure against the divorce proceeding initiated by the husband /petitioner no.1.

15. It is also to be mentioned in this context that though the above mentioned admissions were made by the opposite party/complainant in a matrimonial proceeding but it is settled law that case may come and go, but statements made in evidence shall remain for ever and for all purposes too, allowed by law, such as to be proceeded with as admission, when they are not rebutted or to be confronted with, under section 145 of Evidence Act, (72CWN 867).

16. In such view of the matter, the allegations levelled by the complainant in the FIR as well as the materials available in the final report filed under section 173 of the Code and all other documents accompanying it, I am satisfied that no case is made out against the present petitioners and the pendency of the instant proceeding against them before the court below is an abuse of process of court.

17. Accordingly **CRR 1382 of 2018** is allowed. The impugned proceeding being GR case no. 1495 of 2012 presently pending before Id. ACJM at Barasat corresponding to Barasat P.S. Case No. 508 of 2012 dated 20.03.2012 stands quashed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)