IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. – 2455 of 2018

IN THE MATTER OF

Swapan Kumar Das @ Swapan Das & Anr.
Vs.
State of West Bengal & Anr.

With

CRR No. - 2864 of 2018

IN THE MATTER OF

Dwaipayan Das
Vs.
State of West Bengal & Anr.

For the Petitioner : **Mr. Ayan Bhattacharjee, Sr. Adv.,**
Mr. Sharequl Haque, Adv.,
Mr. Debarka Guha, Adv.

For the State : **Mr. Saswata Gopal Mukherjee, Adv.,**
Mr. Imran Ali, Adv.,
Ms. Debjani Sahu, Adv.

Judgment on : **21.08.2023**

Subhendu Samanta, J.

Both the criminal revisions are taken up together for brevity of discussion on the ground that parties of both the criminal proceedings are same. The private opposite party No.

2 Bnashree married the petitioner Dwaipayan Das on 27th of October, 2016 as per the provisions of Special Marriage Act 1954. The opposite party No. 2 lodged a written complaint with the O.C. Baguihati Police Station on 13th of October 2017 contending inter alia that her husband Dwaipayan Das inflicted physical and mental torture upon her since marriage and on that day i.e. on 13.10.2017 Dwaipayan assaulted the de-facto complainant Banashree and also tried to kill her. On the basis of the said complaint Baguihati Police Station Case No. 679/2017 dated 13.10.2017 u/s 498A/307 of IPC was started against Dwaipayan. Investigation of the police is started. It is the further allegation that during the investigation of that case a talk of settlement was arrived at between the parties and the de-facto complainant Banashree went to her matrimonial home on 26th of October, 2017 and started staying there on. On 14th December 2017 Banashree again lodged another written compliant with the O.C. Baguihati Police Station containing physical and mental torture inflicted upon her by her husband and in-laws during her stay at her matrimonial home. On the basis of such complaint another Baguihati P.S Case No. 773 of 2017 dated 14.12.2017 u/s 498A/506(ii)/406 of IPC was started against Dwaipayan and his parents. Now the husband and the in-laws of the de-facto

complainant filed two separate applications before this court u/s 482 of the Code of Criminal Procedure for quashing both the criminal proceedings.

Learned Advocate for the petitioner submitted before this court that the Criminal Proceedings initiated by the de-facto complainant by virtue of a petition of complaint before the Baguihati P.S is purposive and harrasive and palpably frivolous. The allegation contend in the petition of complaint are concocted, no such fact of assault or torture has ever been effected upon the de-facto complainant. Since the marriage the de-facto complainant never intent to stay with her in-laws consequently, a separate accommodation situated at Aloka Villa was arranged by the husband petitioner and they are residing separately there.

It is the further submission of the Learned Advocate for the petitioner that the proceedings initiated against the petitioner is absolutely baseless and displays clear misuse of the provisions of criminal law. The police has conducted investigation in respect of both the police cases and submitted two separate charge sheets. On perusing the said charge sheet it would be appeared that the police conducted investigation in a perfunctory manner. No such materials or ingredients are there to justify the allegation of offence punishable u/s 498A of

the IPC. He submitted if the proceedings are allowed to be continued the petitioners shall be harassed and suffers immense without any sufficient reason.

Learned Advocate for the state submitted before this court that the investigation of the police has conducted and ended in charge sheet in respect of both the police cases. During the course of investigation the statement of available witnesses were recorded and after finding the prima facie materials u/s 498A has made out, the police submitted charge sheet. The criminal proceedings which was ended in charge sheet with sufficient materials can not be quashed at the stage.

Learned Advocate for the petitioner in reply submitted the criminal proceedings are only harrasive and purposive in nature. The de- facto complainant has already severe the tie of marriage with the present petitioner's husband vide an order of Matrimonial Suit no. 555 of 2018. The de-facto complainant has initiated the Matrimonial Suit which was decreed by the ex-parte in favour of the de-facto complainant Banashree. It is the only intention of the de-facto complainant to harras the present petitioner by virtue of pendency of the instant criminal case. He prayed for quashing.

In support of his contention he cited some decisions of Hon'ble Supreme Court and this Hon'ble High Court in

Chandralekha and Ors. Vs. State of Rajsthan and Anr. (2013) 14 SCC 374 "quashing of FIR justified allegations are general and omnibus and extremely vague no specific role attributed to each of the appellants".

In **Arif Ali Vs. State of West Bengal and Anr. (2020) 1 CCRLR Cal 200,** this High Court quashed a criminal proceedings u/s 482 of the Cr.P.C. on the ground that there is no cogent evidences by virtue of which the impugned proceeding could be allowed to continue.

In **Resaul Islam and Anr. Vs. State of West Bengal [2010 (3) AICLR]** wherein this Hon'ble High Court has observed

> *6. The crux of the controversy is whether there is any material worth mentioning so as to indicate that there had been any* act of cruelty on the part of the petitioners inflicted on the unfortunate alleged victim. After careful consideration of the averments made in the Firs Information Report and on scrutiny of various statements recorded in Section 161 of the Code of Criminal Procedure, I fail to find any such evidence showing that any of these petitioners ever inflicted any kind of torture, mental or physical or otherwise in order to meet any unlawful demand for any property or valuable security. It is true that 'cruelty means any wilful conduct on the part of the accused person 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. It is clear that from the materials available in the case-diary that none of the witnesses, not even the complainant made any statement reflecting such conduct on the part of the petitioner/ accused persons.

> *7. Sub- Section (b) of Section 498A of the Indian Penal Code lays down that "cruelty" means harassment of the woman where such harassment is with a view to coercing her of 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. Unfortunately for the prosecution, there is no such material nor any statement recorded in Section 161 of the Code of Criminal Procedure, not even an allegation in the First Information Report that there had been any harassment with a view to coercing the alleged victim lady or any person related to her to meet any unlawful demand for any property or valuable security or such harassment is on account of failure by her or any person related to her to meet such demand. The materials in the case diary, of course, contain certain statements of witnesses indicating that there had been occasion for the husband of the alleged victim lady to physically assault her. But mere physical assault in absence of any unlawful demand as indicated hereinbefore would not construe the offence under Section 498A of the Indian Penal Code. Similarly, there is no such material so as to suggest that there had been willful conduct of such nature as was 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.*

Hon'ble Supreme Court in **Manju Ram Kalita Vs. State of Assam (2009) 13 SCC 330** has observed the meaning of 'cruelty' enumerated u/s 498A IPC as follows

> *20. In Girdhar Shankar Tawade v. State of Maharshtra this Court held that "cruelty" has to be understood having a specific statutory meaning provided in Section 498A IPC and there should be a case of continuous state of affairs of torture by one to another.*

> *21. "Cruelty" for the purpose of Section 498-A IPC is to be established in the context of Section 498-A IPC as it may be different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide, etc. It is to be established that the woman has been subjected to cruelty continuously/ persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be terms as "cruelty" to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty.*

Learned Advocate for the appellant also cited a decision of Hon'ble Supreme Court passed in **T.T. Antony Vs. State of Kerala and Ors. reported in (2021) 6 SCC 181** on the principle that the second FIR lodged by the de-facto complainant is not permissible in the eye of law. It is the argument of the Learned Advocate for the petitioner that Hon'ble Supreme Court in **T.T. Antony** has specifically clear the view that the information of a cognizable offence shall be given rise to a criminal proceeding u/s 154 of Cr.P.C that would be better term as FIR. The subsequent information in respect of selfsame occurrence cannot allow the police to register a separate case but it is the duty of the police to record such incident as the part of the investigation u/s 162 of the Cr.P.C. The relevant paragraph of **T.T. Antony** are set as follows

18. An information given under Sub-section (1) of Section 154 Cr.P.C. is commonly known as first information report (FIR) though this term is not used in the Code. It is a very important document. As as its nickname suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law in motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 Cr.PC., as the case may be, and forwarding of a police report under section 173 Cr.P.C. It is quite possible and it happens not infrequently that more informations that one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 Cr.P.C. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the first information report—FIR postulated by Section 154 Cr.P.C All other information made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 Cr.P.C. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of Cr.P.C. Take a case where an FIR mentions cognizable offence under Section 307 or 326 IPC and the investigating agency learns during the investigation or recives fresh information that the victim died, no fresh FIR under Section 302 IPC need be registered which will be irregular; in such a case alteration of the provision of law in the First FIR is the proper course to adopt. Let us consider a different situation in which H having killed, W, his wife, informs the police that she is killed by an unknown person or

knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H—the real offender—who can be arraigned in the report under section 173(2) or 173(8) Cr.P.C, as the case may be. It is of course permissible for the investigating officer to send up a report to the Magistrate concerned even earlier that investigation being directed against the person suspected to be the accused.

19. The scheme of Cr.P.C is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 Cr.P.C on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 Cr.P.C. as the case may be, and forward his report to the Magistrate concerned under Section 173(2) Cr.P.C. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh Fir; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 Cr.P.C.

20. From the above discussion it follows that under the scheme of the provisions of Sections 154,155,156,157,162,169,170 and 173 Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 Cr.P.C. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to

> *investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 Cr.P.C.*

Heard the Learned Advocate.

Perused the petitions also perused the CDs placed before me by the concerned authority. It appears that the FIR being No. 679 was initiated on the basis of written complaint of Banashree wherein she alleged the physical and mental torture inflicted upon her on 13.10.2017. during the course of investigation of that case police recorded the statement of parents of Banashree and also recorded the statement of one neighbour of a building wherein the de-facto complainant and her husband was staying separately. The allegations against the husband is general and omnibus. The witnesses also did not bring out any more further ingredients of such allegations. If, the facts shows after such complaint there were compromise between the parties for which Banashree started living her matrimonial home since 26.10.2017.

However, it is the counter case of the petitioners herein that Banshree never stay at her matrimonial home with the in-laws but Banashree and her husband residing separately in a separate flat. However, Banashree again lodged a complaint on 14th December 2017 alleging the husband and her in-laws for

the offence of physical and mental torture upon her since the date of marriage. Police again started investigation on the basis of FIR dated 14.12.2017 and same set of evidences of available witnesses were recorded u/s 161 Cr.P.C. During the course of investigation several household articles were seized by the police from the flat wherein the de-facto complainant and her husband was staying. The household articles were taken jimma to the de-facto complainant. After conclusion of investigation police submitted charge-sheet against all the accused persons.

After scanning the entire facts and circumstances of this case it appears to me that the first complaint on October 2017 does not alleged the commission of offence by the in-laws but in the subsequent complaint of December 2017 disclosed the allegation against the husband and the in-laws.

The facts and circumstances of this case is not parallel to the case of **T.T. Antony**. More over, two complaints of Banashree one of two separate incident. Thus, the principle of **T.T. Antony** is not squarely applicable in this case. The subsequent FIR cannot be said to be second FIR.

It has been alleged in the complaint of December 2017 that the de-facto complainant was subjected to physical and mental torture since her marriage.

The basic allegation of offence punishable u/s 498A of IPC has some specific ingredients they are:-

1. Married woman was subjected to cruelty.

2. Such cruelty consisted in

a) in lawful conduct as was likely to drive such women to commit suicide or to cause grave injury or danger to her life, limb or health whether mental or physical.

b) harm to such women with a view coercing her to me unlawful demand for property or valuable security or on account of failure of such woman or not of her relations to him the lawful demand.

c) the women was subjected to such cruelty by her husband or any relation of her husband.

Thus to substantiate an offence punishable u/s 498A of IPC the prosecution has to prove the above mentioned ingredients. The allegation of physical and mental torture in both the cases appears to be general and omnibus. The ingredients of the offence specifically the statement of available witnesses does not disclose any specific prima facie materials by which the present petitioner can be entangled for the offences u/s 498A IPC. Since

marriage it is proved that Banashree and her husband were residing separately in separate accommodation.

In considering the role of husband in this case it appears that the allegation is there relating to physical and mental torture inflicted upon Banashree on 13th October 2017.

CD included a medical prescription wherein no injury in the person of Banashree is found. The statement of available witnesses recorded by the investigating officers also not supporting the case of the complainant regarding the direct evidence of torture. The certified copy of matrimonial suit no. 555 of 2018 which was filed by the de-facto complainant for divorce is placed before me. On perusal the pleadings on that MAT Suit, it appears to me that several other facts were alleged in the said complaint. There are no co-relation between the pleading of MAT suit and the present complaint.

The legislature has enacted the provision of Section 498A to strike out the dowry meance from the society. But it is observed in several cases that by misusing of said provision new legal terrorism is unleashed. Harassment and torture enumerated in the definition of

security u/s 498A cannot be proved solely by the de-facto complainant. The criminal law is allowed, complainant to file a criminal complaint but the same has to be justified by adducing cogent evidences. The four corners of both the CDs recorded no such evidence by which prima facie offence against the present petitioners can be established. The direct allegation against the husband by the de-facto complainant is merely from the version of the de-facto complainant herself. It support no documentary or medical evidence. One neighbour has heard about the quarrel of Banshree her husband; the quarrel of two persons does not mean or prove who is in aggression or who is aggrieved.

This revisional court is hearing the revisonal application u/s 482 of the Code of Criminal Procedure. It is true that in this stage of roving enquiry to the merits of the materials placed in the CD is not permissible more over, if the alternative view be available, that shall not encouraged the petitioner to get an order for quashing.

The inherent power of High Court u/s 482 has been specifically observed by the Hon'ble Supreme Court in several decisions. In State of **Hariyana Vs. Ch. Bhajanlal and Ors.** Hon'ble Supreme Court has

formulated the basic principle wherein the inherent power of High Court u/s 482 of the Code of Criminal Procedure may be invoked to quash a criminal proceeding. In Para 108, Hon'ble Supreme Court has held that--

108. In the backdrop of the interpretation of the various relevant provisions of the Code 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 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of 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.

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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.

On perusing the observation of Hon'ble Supreme Court in **Ch. Bhajanlal,** I am of a view that the instant criminal proceedings initiated by the de-facto complainant against the husband and in-laws does not disclose prima facie offence against them as alleged. The proceeding are instituted only to fulfil personal grudge.

Considering the circumstances I think it necessary to invoke the inherent power of this court to quash the proceedings otherwise the continuation of the criminal proceedings would be tantamount to the abuse of process of court.

I find merit, in the instant criminal revisions and it is liable to be allowed.

CRRs are allowed.

The criminal proceedings being GR Case No. 4369 of 2017 arising out of Baguihati Police Station case no. 679 dated 13.10.2017 u/s 498A/307 IPC and the criminal proceedings being GR No. 4694 of 2017 arising out Baguihati P.S case No. 773 dated 04.12.2017 u/s 498 A/506 (ii)/406 of IPC pending before the Learned Chief Judicial Magistrate Barasat respectively are hereby quashed.

CRRs are disposed of along with pending connected CRAN applications.

Any order of stay passed by this court during the continuation of the instant criminal revision is hereby also vacated.

CD be returned.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)