

(2019) 07 CAL CK 0069

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 2389 Of 2018

Arif Ali

APPELLANT

Vs

State Of West Bengal And Anr

RESPONDENT

Date of Decision : 22-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 482
Indian Penal Code, 1860 — Section 34, 406, 498A
Evidence Act, 1872 — Section 113A

Citation : (2019) 07 CAL CK 0069

Hon'ble Judges : Suvra Ghosh, J

Bench : Single Bench

Advocate : Ayan Bhattacharjee, Sharequl Haque, Sujata Mitra, Imtiaz Ahmed, Ghazala Firdaus, Smita Saha, Shaila Afrin, Sk. Saidullah, Sibasish Banerjee, Syed Murshid Alam, S.G. Mukherjee

Final Decision : Allowed

Judgement

Suvra Ghosh, J

1) In the present revisional application under Section 482 of the Code, the petitioner has prayed for quashing the Charge Sheet being Charge Sheet

No. 212 of 2016 dated December 16, 2016 under Sections 498A/406/34 of the Penal Code, 1860, arising out of G.R. Case No. 2931 of 2016 pending

before the learned Additional Chief Judicial Magistrate, Sealdah, 24 Parganas North.

2) The opposite party no. 2 lodged complaint before the officer-in-charge, Tangra Police Station, against the petitioner and others alleging commission

of offence punishable under Sections 498A/406/34 of the Penal Code wherein she alleged that the petitioner, being her husband, subjected her to

physical and mental cruelty after her marriage and finally drove her out of her

matrimonial home after retaining her stridhan articles wrongfully. The case is pending before the trial court and charge-sheet has been submitted against the petitioner and others after completion of investigation.

3) Learned advocate for the petitioner submits that the allegations made in the complaint fall far short of the ingredients of offence under Section

498A of the Penal Code. Learned advocate refers to the copy of a document dated 28-02-2016 giving detailed information of the marriage ceremony

between the parties wherefrom it appears that there was neither any demand for dowry, nor any dowry given. Therefore, the alleged demand of

dowry stated in the complaint is false and baseless. No specific case has been made out against the petitioner either in the complaint or in the charge-

sheet. Hence the entire proceeding is required to be quashed.

4) Opposite party no. 2 who is the wife of the petitioner vehemently opposes the contention of the petitioner and submits that there is sufficient

material in the complaint suggesting mental cruelty upon the opposite party by the petitioner. The document of marriage relied upon by the petitioner is

not a Nikahnama and was executed prior to the marriage. The matter essentially involves disputed questions of fact which can only be decided at the

time of trial, a prima facie case against the petitioner having been made out.

5) The State is represented and submits that whether there was any cruelty inflicted upon the opposite party can be assessed only on appreciation of

evidence. At this stage, it shall not be justified to interdict the prosecution.

6) Reliance has been placed by the State on the authority in *Rupali Devi v/s. State of Uttar Pradesh* and others reported in 2019 (2) AICLR 360

(S.C.) wherein the Honâ??ble Supreme Court has dealt with Section 498A of the Penal Code as well as the presumption under Section 113A of the

Evidence Act. In dealing with the expression â??crueltyâ?? the Honâ??ble Court observed that â??Cruelty can be both physical or mental cruelty.

The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven

away from the matrimonial home and her helplessness to go back to the same home for fear of being ill-treated are aspects that cannot be ignored

while understanding the meaning of the expression cruelty appearing in Section 498A of the Indian Penal Code.â??

7) In the complaint filed by the petitioner, the main thrust of the allegations is

against the mother in law and other members of the matrimonial family.

The mother in law is alleged to have retained all the jewellery and valuables of the opposite party in her custody and she along with other members of

the family allegedly treated the petitioner as their maid-servant, showed disrespect towards her, rebuked her and engaged her in various menial jobs.

The allegation against the petitioner in the written complaint is that he used to join the other members in such acts and insisted that the petitioner

remained within the four walls of the house and performed the duties allotted to her. According to the opposite party, the petitioner wanted her to

remain with her matrimonial family and objected to her speaking to her parents. The petitioner also insisted that the opposite party shared the bed with

a domestic help while the petitioner remained in a different room.

8) Investigation was conducted by the investigating officer of the case which culminated in submission of charge-sheet. The investigating officer

recorded statements of the brother, mother, father and the opposite party herself under Section 161 of the Code and of no other person who may have

been acquainted with the families of both the parties or was in a position to co-operate with the investigation by enlightening the investigating officer

regarding the facts, was examined. The parents and the brother of the opposite party shall invariably speak in tune with the opposite party and in

absence of any prima facie material against the petitioner elicited in course of the investigation, it can be held that no prima facie case under Sections

498/406 of the Penal Code has been made out against him. The opposite party has relied upon a decision of a co-ordinate Bench of this Court in *Tarit*

Sakar v/s. State of West Bengal reported in 2019 (1) E Cr. N (CAL) 693 wherein it is observed that in view of specific overt acts being attributed to

the accused, the truth of such allegations could not be assessed before trial and the matter involved disputed questions of facts which could be decided

only during trial. The Court dismissed the prayer of the petitioner therein for quashing of the proceedings against him.

9) The ratio of the said case can be distinguished from the factual matrix of the present case as in the present case, no prima facie case has been

made out against the petitioner either in the complaint, or during investigation, nor any overt act attributed to him which would constitute an offence

under Section 498A of the Penal Code.

10) It is needless to state that inherent jurisdiction of the High Court under Section 482 of the Code should be exercised with extreme care and caution

and when a complaint is sought to be quashed, the court can look into the material on record to assess whether an offence is prima facie made out

even if the allegations are accepted as they are.

11) The allegations levelled against the petitioner in the complaint do not constitute an offence under Section 498A/406 of the Penal Code. Besides the

petitioner passively supporting the other accused persons, no other allegation has in fact been made out against him. The petitioner's concern

about the domestic help of the family also cannot be termed as cruelty within the ambit of Section 498A of the Penal Code.

12) Reliance has been placed on several authorities by the petitioner. In Bhaskar Lal Sharma and another v/s. Monica reported in (2009) 10 SCC 604,

the Hon'ble Supreme Court has held that "For proving the offence under Section 498A IPC, the complainant must make allegation of

harassment to the extent so as to coerce her to meet any unlawful demand of dowry, or any wilful conduct on the part of the accused 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."

13) Similar proposition of law is enunciated in Preety Gupta and another v/s. State of Jharkhand and another reported in (2010) 7 SCC 667. In

Chandralekha and others v/s. State of Rajasthan and another reported in (2013) 14 SCC 374, the Hon'ble Supreme Court has held that when the

allegations are extremely general in nature and no specific role is attributed to the appellant the FIR deserves to be quashed. The same ratio is also

reflected in Pritam Ashok Sadaphule and others v/s. State of Maharashtra and another reported in (2015) 11 Supreme Court Cases 769 and Rashmi

Chopra v/s. State of U.P and another reported in 2019 (7) SCALE 152.

14) In the same vein, this court has held in Rejaul Islam and another v/s. State of West Bengal reported in 2010 (3) AICLR 553 that "Mere

physical assault in absence of any unlawful demand as indicated hereinbefore would not construe the offence under Section 498A of the IPC.

Similarly, there is no such material so as to suggest that there had been wilful 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.â??

15) In the present case, there is no allegation of physical torture upon the opposite party and also no prima facie material to suggest mental torture upon her.

16) Upon scrutiny of the complaint, statement of witnesses under Section 161 of the Code as well as the charge-sheet, it is evident that there is no

prima facie material under Section 498A of the Penal Code against the petitioner. The allegations levelled against him do not constitute an offence

under Section 498A of the Penal Code. There may have been certain misunderstandings and mal-adjustment between the couple which led to lodging of the complaint but such marital discord can under no stretch of imagination be termed as cruelty upon the opposite party. Allowing such proceeding

to continue further shall result in abuse of the process of the court and as such, is required to be quashed, to secure the ends of justice.

17) Accordingly, the entire proceedings of G.R. Case No. 2931 of 2016 pending before the learned Additional Chief Judicial Magistrate, Sealdah,

North 24 Parganas is quashed.

18) CRR 2389 of 2018 is allowed accordingly.

19) Case diary be returned.

20) Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.