

**(2011) 03 CAL CK 0132**  
**In the Calcutta High Court**  
**Case No : C.R.R No. 3255 of 2010**

Durshi Chand Agarwal

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

**Date of Decision :** 23-03-2011

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Dowry Prohibition Act, 1961 — Section 3, 4  
Hindu Marriage Act, 1955 — Section 9  
Penal Code, 1860 (IPC) — Section 34, 406, 498A  
Protection of Women From Domestic Violence Act, 2005 — Section 12

**Citation :** (2011) 2 CHN 1011 : (2011) 2 DMC 377

**Hon'ble Judges :** Kanchan Chakraborty, J

**Bench :** Single Bench

**Advocate :** Sekhar Kumar Basu, Joymalya Bagchi, Saurav Chatterjee, Ranabir Roy Chowdhury, Shiladitya Banerjee and Debrup Chakraborty, for the Appellant; Sudipta Mitra and Swapan Kumar Mallick for O.P. No. 2 and Sandipan Ganguly, for the State, for the Respondent

## Judgement

Kanchan Chakraborty, J.—This application u/s 482 of the Code of Criminal procedure 1973 ( hereinafter referred to as The Code) for quashing of the proceeding in C.G.R No. 2543 of 2009 arising out of Kalighat Police Station case No. 140 of 2009 dated 26.7.2009 under Sections 498A/406/34 of the Indian Penal Code and u/s 3/4 Dowry Prohibition Act is filed at the instance of Durshi Chand Agarwal and Raj Kumari Agarwal, the accused No. 2 and 3.

2. Megha Agarwal wife of Deepak Agarwal (accused No. 1 in the case-in-question) lodged one FIR with Kalighat Police Station against her husband Deepak Agarwal and the Petitioners who happen to be her father-in-law and mother-in-law, respectively, alleging therein that her marriage with Deepak Agarwal took place on 11.7.2007 and after marriage she had been to her matrimonial house at 49, Guru Pada Haldar Road, Calcutta - 700026 where she started her matrimonial life. At the time of marriage cash of Rs. 35,00000/- was given to the

accused persons as Dowry. Besides that other valuables were also given. About 4/ 5 months after her marriage, her husband Deepak Agarwal started to inflict physical torture on her as she refused to bring Rs. 1 crore from her father according to the demand of her husband. The Petitioner Raj Kumari Agarwal, the mother-in-law openly supported Deepak to cause sufferance and inflict torture on Megha. Raj Kumari Agarwal, the Petitioner No. 2 declared that in case of her failure to bring money, Megha would not be allowed to bear children. Her husband threatened her of dire consequences also. She was kept in locked room and subjected to ill treatment. To quell the fury and in order to bring peace in the matrimonial life of Megha, her father started paying Rs. 50,000/- per month to Deepak. On 19.7.2009 at about 2.30 hours, Deepak disrobed Megha completely and ousted her from the flat. She was kept in open common verandah for about 2 and 1/2 hours in such a condition. Prior to that on 16.7.2009 the Petitioners left for Rajasthan. The Petitioner Raj Kumari, however, instructed Deepak over telephone that unless and until Megha brings Rs. 1 crore from her father, Deepak should continue torture and must not keep any touch with Megha. The Petitioner No. 2 Raj Kumari Agarwal also refused to return jeweler is of Megha when she asked for those jewelries. Petitioner No. 2 Raj Kumari Agarwal used to hurl filthy and dirty words towards Megha all the time. The Petitioner Durshi kept silent and sometimes said Megha that everything would be all right if she brings money.

3. On the basis of said FIR, the Kalighat Police Station started investigation into the case and collected some evidence but, ultimately, the further investigation into the case was stopped due to interim stay order passed by this Court. Investigation so far could be done shows that Pradip Garg (brother of Megha) reported the incident to the Kalighat Police Station over telephone and accordingly an entry in the general diary of Kalighat police Station was made on 27.7.2009 at 13.45 hours. On the same date, the officials of Kalighat police station had been to 49, Gurupada Haldar Road, Calcutta - 26, and examined Megha who disclosed everything to the officers of Kalighat police station. Deepak was arrested and these Petitioners were reported to have been left for Rajasthan. Megha was medically examined at Sambhu Nath Pandit hospital and she stated to the Doctor that she was physically assaulted by Deepak, her husband. In course of investigation so far could be done, the Investigating officer made inventory of the articles found inside the safe deposit vault of panjab National Bank, Kalighat branch in presence of Megha Agarwal, Raj Kumari Agarwal and others. The vault was opened with the help of Key produced by the Petitioner Raj Kumari Agarwal from her custody.

4. Mr. Joymalya Bagchi, the learned Counsel appearing for the Petitioners contended that this is a proper case where this Court should exercise its extraordinary power u/s 482 of the Code of Criminal Procedure (hereinafter referred to as The Code) and quash the proceeding in order to stop abuse of the process of the Court and mis-carriage of justice. Mr. Bagchi also contended that the illustration Nos. (3) and (7) given by the Hon"ble Apex Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, are squarely applicable in the

instant case. Mr. Bagchi submitted that the allegations put forth in the FIR and evidence so far collected in support of the same do not disclose commission of any offence and make out any case against the Petitioners. Therefore, continuance of such a proceeding would be amounting to abuse of the process of the Court and gross mis-carriage of justice. Mr. Bagchi has taken me to the counter affidavit filed by Megha Agarwal, the de facto complainant and submitted that Megha Agarwal not only filed the instant case but also filed another FIR in Tollygunge Police Station wherein she made her husband, the Petitioners and two married sisters of her husband as accused. At that time of lodging the second FIR in Tollygunge Police Station, these Petitioners were not living with Megha and her husband jointly. In the FIR lodged by Megha with Tollygunge police station discloses happening of one incident which has got no connection, whatsoever, with the FIR lodged earlier by Megha in Kalighat Police Station. Subsequent filing of another FIR against the Petitioners connecting them with another incident is completely a result of after thought and manifestly attended with mala fide. This fact alone is sufficient enough to indicate that the proceeding initiated by Megha against the Petitioners with an ulterior motive for wreaking vengeance on them with a view to spite them due to personal grudge. Megha, the de facto complainant, with oblique motive dragged these two Petitioners in another case simply in order to harass them. Megha acted peculiarly because she, after lodging the FIR in Tollygunge Police Station, filed a suit u/s 9 of Hindu Marriage Act praying for restoration of her conjugal rights which, however, was withdrawn subsequently. Mr. Bagchi has drawn attention of this Court to the facts averred in the FIR lodged in Kalighat Police Station and contended that on 19.7.2009, i.e., the date when Megha was disrobed and ousted from the flat by Deepak Agarwal, these two Petitioners were at Rajasthan. The G.D. entry of Kalighat police station indicates also that on 26.7.2009 when the police officials attached to Kalighat police station had been to 47, Gurupada Haldar Road, these two Petitioners were not found there and it was reported that they had gone to Rajasthan. Mr. Bagchi contended that it is clear from the FIR and the G.D. entry that these two Petitioners were not at all at Calcutta since 16.7.2009 till 26.7.2009. Therefore, they can not be involved with the incident dated 19.7.2009.

5. Mr. Bagchi contended that Clause (a) of explanation to the Section 498A IPC postulates that any willful conduct which is of such a nature as is likely to drive a woman to commit suicide only constitutes "cruelty. Such willful conduct, which is likely to cause grave injury or danger to life, limb or health (whether mental or physical) of the women may also amount to "cruelty. The Clause (b) of the explanation provides that harassment of the women 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 an account of failure by her or any person related to her to meet such demand, it also constitute "cruelty" for the purpose of Section 498A IPC. So a plain reading of Section 498A with explanation appended thereto makes it clear that every harassment does not amount to "cruelty" within the meaning of Section 498A IPC.

6. Drawing attention of this Court, Mr. Bagchi submitted that if the FIR in question is read as a whole it will be found that these two Petitioners have not done anything which attract the offence u/s 498A in true sense. In support of his contention, Mr. Bagchi has referred to a decision of the Hon''ble Apex Court in Neelu Chopra and Anr. v. Bharati reported in (2010) 1 SCC (Cri) 286 In that case, the Hon''ble Court observed that mere mentioning of relevant section and language of the section are not sufficient enough to make allegations. Particulars of offence committed by each accused and role played by them in committing that offence need to be stated. When that is not been done, continuation of prosecution against accused persons would be abuse of the process of law. Mr. Bagchi has referred to another decision of the Hon''ble Court in Sundar Babu and Ors. v. State of Tamil Nadu (2009) 2 Cri.L.R. (SC) 706 and contended that the de facto complainant Megha Agarwal filed a suit for restoration of conjugal right even after lodging the FIR in Tollygunge Police Station long after lodging of the instant prosecution. Of course, there was a vital change in the circumstances which had driven her to do so. Although she had withdraw the suit, the change in the circumstance can not possibly be ignored. Therefore, it can be taken for granted that in order to spite the Petitioners due to prior and personal grudge, Megha Agarwal lunched the prosecution against the Petitioners with ulterior motive for wreaking vengeance on them.

7. Mr. Bagchi also contended that it is true that Court should not quash a proceeding when there exists a strong prima facie case which is made out by the complainant in the FIR/complaint and other documents against an accused. But, the provisions of Section 482 of the Code in the matter of exercising inherent power can not be used as a devise to achieve/ill motives when no case is, at all, made out. Mr. Bagchi also referred to the decision in Union of India v. Prakash P. Hinduza and Ors. reported in 2003 Cri.L.R. (SC) 725 and has drawn attention of this Court to paragraph 9 of the Judgment.

8. Mr. Bagchi submitted that the Tollygunge police station case is to be considered by this Court together with the FIR lodged in Kalighat police station otherwise this Court will not be in a position to scrutinize the entire circumstances. If both the FIR are kept side by side and read together, it will appear that while lodging the FIR in Tollygunge Police Station Megha Agarwal made exaggerated version of small incident which were absent in the earlier FIR lodged by her in Kalighat Police Station. Therefore, Court should find the genuineness of the averments made in the FIR lodged by her in Kalighat Police Station keeping in mind that subsequently another case was filed making these two Petitioners as accused together with others and the fact that the de facto complainant filed a suit u/s 9 of Hindu Marriage Act and also filed a case u/s 12 of the protection of women from Domestic violation Act, 2005.

9. Mr. Maitra, learned Counsel appearing for the opposite party No. 2 contended that while considering the prayer for quashing of the proceeding initiated in Kalighat Police Station, this Court should not look at the Tollygunge Police Station

case. The Court should not also take into consideration that Megha Agarwal filed a suit for restoration of conjugal rights which she had subsequently withdrawn. Court should see whether the FIR lodged by Megha Agarwal in Kalighat Police station contains materials sufficient enough to constitute broadly a prima facie cognizable offence committed by the Petitioners or not. According to Mr. Maitra, the FIR in question contains sufficient materials against both the Petitioners disclosing, prima facie, commission of offences u/s 498A and 406 of IPC by them. Therefore, this Court should not quash the proceeding.

10. Mr. Maitra submitted again that the FIR ought not to be thwarted at the initial stage unless materials do not disclose an offence. The FIR should be read as a whole and should be indicative of an offence broadly and not with mathematical accuracy and nicety. In support of his contention, Mr. Maitra referred to the decisions of the Hon''ble Apex Court in *S. M. Dutta v. State of Gujrat* (2001) SCC 3253 and *State of Orrisa and Anr. v. Saroj Kumar Shoo* (2006) SCC (Cri) 272.

11. Mr. Maitra submitted further that High Court should not exercise its inherent power to stifle a legitimate prosecution and should refrain from giving prima facie decision where entire facts are incomplete and hazy, more so, when evidence is not collected and produced before the Court and the issues involved, whether factual or legal, can not be seen in their true perspective without sufficient materials. To find support of his contention, Mr. Maitra referred to the decisions in *T. Vengama Naidu v. T. Darashawmi Naidu and Ors.* ( 2008) 2 SCC (Cri) 231 and *Minu Kumari and Anr. v. State of Bihar* (2006) 2 SCC (Cri) 310.

12. Besides the decision of the Hon''ble Apex Court in *State of Hariyana v. Bajan Lal* 1992 SCC (Cri) 426 Mr. Mitra also referred to the decisions of the Hon''ble Court in *Union of India v. Prakas P. Hinduja and Ors.* 2003 Cri.L.R. (SC) 752 and *Jahan Singh v. Delhi Administration* 1974 SCC (Cri) 558.

13. Mr. Swapan Mallick, learned Counsel for the opposite party/ State of West Bengal contended that the FIR as well as the C.D. contain sufficient materials suggesting involvement of the Petitioners in the alleged crime and at this primary stage of investigation which has also been stayed by an interim order, Court should not exercise its inherent power u/s 482 of the Code of Criminal Procedure and quash the proceeding.

14. I have carefully gone through the FIR -in-question which was lodged by Megha Agarwal in Kalighat Police Station against her husband and these two Petitioners very attentively. No doubt, there are sufficient materials and direct allegations against the husband Deepak Agarwal which, prima facie, constitute offences u/s 498A/406 of IPC. It is also found that when the incident dated 19.7.2009 had taken place, these two Petitioners were not at Calcutta. They were at Rajasthan and therefore, obviously, did not take part in that episode.

15. As regards the other averments in respect of entrustment of golden ornaments and Sridhar properties are concerned, I find that the Petitioner No. 1 Durshi Agarwal can hardly be connected with that. To be stated precisely, there is

no direct or indirect allegation against Dursi Chand Agarwal, the Petitioner No. 1 in the FIR which constitutes an offence u/s 406 of the IPC against him. On the contrary, it appears from the G.D. entry mentioned earlier that the key of the locker was found in the possession of Petitioner Raj Kumari Agarwal and locker stood in the names of Rajkumari and Megha Agarwal jointly. There is specific allegation against Raj Kumari Agarwal to the effect that she refused to provide the key of the locker to Megha Agarwal for her use. But, there is no allegation of like nature against the Petitioner Durshi Agarwal. As far as offence u/s 498A IPC is concerned, it is redundant to mention that every harassment does not amount to "cruelty" within the meaning of Section 498A IPC. The Petitioner No. 1, even the aspersions and allegations in the FIR are accepted in their entirety, has not inflicted "cruelty" on the de facto complainant Megha Agarwal in any manner whatsoever. Allegation against him is that he remained silent and did not protest. Further allegation against him is that he consoled Megha Agarwal that everything will be all right if she brings money. These facts, in my estimate, do not constitute any offence u/s 498A of IPC as far as Petitioner Durshi Chand Agarwal is concerned. It can not also be said that he abated the offence simply because he remained silent. Who knows what was his position in his own family ? Mere mentioning of relevant sections and language of the sections are not sufficient enough to constitute an offence. Particulars of offence committed by each accused and role played by them in committing that offence need to be stated. In the instant case, the FIR in question although contains the Sections 498A and 406/34 of IPC and languages therein, particulars of offence committed by Durshi Chand Agarwal, the Petitioner No. 1 and role played by him in committing those offences have not been mentioned at all. Therefore, although the investigation into this case is at its primary stage, I find no reason to continue the proceeding against the Petitioner No. 1, Durshi Chand Agarewal as far as Kalighat Police Station case is concerned.

16. In my humble estimate, this appears to be a proper case where the explanation (3) given by the Hon'ble Apex Court in Bhajan Lal case (Supra) can well be applied. Therefore, I allow his prayer for quashing the proceeding against him.

17. As far as the Petitioner No. 2 Raj Kumari Agarwal is concerned, I find that the FIR-in-question and materials collected by the I.O. so far, contain sufficient materials suggesting that the Petitioner Raj Kumari Agarwal took active part both in inflicting "cruelty" within the meaning of Clause (b) of explanation appended to Section 498A as well as breach of trust u/s 406 of IPC. Although she was not present when the incident dated 19.7.2009 had taken place but, she instigated her son Deepak over phone her to carry on the process of torturing on Megha Agarwal unless she brings Rs. 1 crore from her father. She declared openly that Megha will not be allowed to bear children in case of her failure to bring money from her father. She used to keep her under lock and key and did not allow her to speak either to her parents and to her neighbors. She has treated as maid servant. All these facts have been averred in the FIR-in-question clearly. Whether

these facts are true or false is to be decided by the Trial Court or at the time of framing of charge upon receiving of complete report of investigation. At this primary stage of investigation, it will not be proper for this Court to ignore the specific allegations made in the FIR against the Petitioner Raj Kumari Agarwal and to stifle a legitimate prosecution at this stage when entire facts are incomplete and hazy - more so, when the evidence has not be collected and produce before the Court and the issues involved are of magnitude and can not be seen in their true perspective without sufficient materials.

18. I, in view of the discussion above, reject the prayer of the Petitioner No. 2. The prosecution against the Petitioner No. 2 should continue. Therefore, the petition is allowed partly. The proceeding against the Petitioner in Kalighat Police Station case No. 140 dated 27.7.2009 be quashed as far as the Petitioner No. 1 Durshi Chand Agarwal is concerned. The proceeding against the Petitioner No. 2 Raj Kumari Agarwal will continue. The interim stay, if any , stands vacated.