

(2022) 09 CAL CK 0065
In the Calcutta High Court
Case No : Criminal Revision No. 69 Of 2022

Nasim Uddin Mallick

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 174, 176, 177, 178, 178(b), 178(c), 179, 482
Indian Penal Code, 1860 — Section 34, 406, 494, 498A, 506, 509
Evidence Act, 1872 — Section 113A

Citation : (2022) 09 CAL CK 0065

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : T.K Mukerjee, Sk. Abu Abbas Uddin, Nahid Rahman, Manjit Singh, Shahid Hossain, Gaganjyot Singh, Rishav Kumar Singh, Imran Ali, Debjani Sahu

Final Decision : Dismissed

Judgement

Bibek Chaudhuri, J

1. This is an application under Section 482 of the Code of Criminal Procedure filed by the accused/petitioner praying for quashing of a criminal proceeding being Pandua P.S Case No.285 dated 8th July, 2021 under Sections 498A/494/406/34 of the IPC corresponding to GR Case No.1447 of 2021 and Pandua P.S Case No.469 dated 28th October, 2021 under Sections 498A/506/509 of the IPC corresponding to G.R Case No.2419 of 2021.

2. For proper appreciation of the circumstances leading to the filing of the instant criminal revision, the following facts are necessary:-

3. Nagris Molla lodged a written complaint on 8th July, 2021 against her husband, petitioner herein, parents-in-law and other matrimonial relations alleging, inter alia, that her marriage with the petitioner was contracted on 3rd March, 2021 according to Mohammedan Personal Law. On the next day of

marriage the opposite party No.2 was taken to Surat by the petitioner. Before marriage the petitioner informed the opposite party No.2 that previously he married to another lady and her first marriage was dissolved by pronouncement of talak and he had no relation with his first wife. It is alleged by the opposite party No.2 that she stayed happily with her husband and other matrimonial relations in Surat only for two days. On the third day, her husband, parents-in-law and other matrimonial relations forcibly took away her ornaments, a sum of Rs.35,000/- which she had brought from her father's house and valuable documents, viz., Voter Card, Aadhar Card, Pan Card, School Certificates etc. On the next day she was taken to another house where was found that the first marriage of her husband was still subsisting and the first wife of her husband was residing at Surat. When the opposite party No.2 asked her husband as to why he had married to her with false assurance, her husband assaulted her, confined her in a room and even did not offer her proper food. The opposite party No.2 somehow informed the incident to her elder brother and he immediately reached Surat, rescued the opposite party No.2 and took her to her paternal home. It was also alleged by the opposite party No.2 that the petitioner had threatened her that he would circulate morphed photograph of the opposite party No.2 in social media through internet. On the basis of the said complaint Pandua P.S Case No.285 of 2021 was registered against the petitioner and other matrimonial relations of the opposite party No.2 under Sections 498A/494/406/34 of the IPC. Be it mention here that on conclusion of investigation police submitted charge-sheet against the petitioner and other accused persons under Sections 498A/34 of the IPC.

4. Subsequently, on 15th September, 2021 the opposite party No.2 filed an application under Section 156(3) of the Cr.P.C against her husband alleging, inter alia, that the accused had been publishing intimate pictures of the opposite party No.2 in his facebook account "Nasim Mallick I.N". The accused also had been threatening her that he would upload morphed obscene photograph of the opposite party No.2 in social media through internet if the opposite party No.2 would fail to withdraw the criminal case instituted against him. The opposite party No.2 informed the matter to the Officer-in-Charge, Hooghly Rural Cyber Crime P.S and the Sub-Divisional Officer, Hooghly as police did not take any action, the petitioner has filed the application under Section 156(3) of the Cr.P.C against the accused. On the basis of the said complaint, police registered Pandua P.S Case No.469 of 2021 dated 28th October, 2021 under Sections 498A/506/509 of the IPC and took up the investigation of the case. On completion of investigation, police submitted charge-sheet against the petitioner under Sections 498A/506/509 of the IPC.

5. It is submitted on behalf of the petitioner that from the facts lodged in the written complaint that the alleged offence under Sections 498A/406/494 of the IPC took place in Surat in the district of Gujrat. Section 177 Cr.P.C contemplates that "every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed." It is, therefore, clear that when the offences were alleged to have been committed in Surat, the learned Magistrate of

Surat, Gujarat has the jurisdiction to inquire into the offence under Section 498A/494/406 of the IPC. Because there is no allegation made by the wife/defacto complainant that any overt act of cruelty or harassment had caused at her parental home after she had left her matrimonial home.

6. The issue as to whether a woman forced to leave her matrimonial home on account of acts and conduct that constitute cruelty can initiate and access the legal process within the jurisdiction of the court where she is forced to take shelter with her parents at her parental home failed for consideration on the reference before the Hon'ble Supreme Court in the case of Rupali Devi vs State of Uttar Pradesh & Ors. reported in AIR 2019 SC 1970.

7. Divergent views of the Hon'ble Supreme Court were taken up for consideration by the Larger Bench in the aforesaid decision and the Hon'ble Supreme Court decided the issue holding, inter alia, that court at a place where wife takes shelter leaving matrimonial home as a consequence of cruelty has jurisdiction to entertain a complaint under Section 498A of IPC.

8. The following paragraph of Rupali Devi deciding the aforesaid issue is respectfully quoted here in below:

"6. A look at the provisions of Chapter XIII of the Code of Criminal Procedure, 1973 (Cr.P.C) dealing with the jurisdiction of the Criminal Court in inquires and trials will now be required. Section 177 of the Code of Criminal Procedure contemplates that "every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed". It is, therefore, clear that in the normal course, it is the court within whose local jurisdiction the offence is committed that would have the power and authority to take cognizance of the offence in question.

7. Sections 178 and 179 are exceptions to the above rule and may be set out here-in-under:

"178.Place of inquiry or trial.-

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

"179. Offence triable where act is done or consequence ensues.- When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within

whose local jurisdiction such thing has been done or such consequence has ensued."

8. Section 178 creates an exception to the "ordinary rule" engrafted in Section 177 by permitting the courts in another local area where the offence is partly committed to take cognizance. Also if the offence committed in one local area continues in another local area, the courts in the latter place would be competent to take cognizance of the matter. Under Section 179, if by reason of the consequences emanating from a criminal act an offence is occasioned in another jurisdiction, the court in that jurisdiction would also be competent to take cognizance. Thus, if an offence is committed partly in one place and partly in another; or if the offence is a continuing offence or where the consequences of a criminal act result in an offence being committed at another place, the exception to the "ordinary rule" would be attracted and the courts within whose jurisdiction the criminal act is committed will cease to have exclusive jurisdiction to try the offence.

9. At this stage it may also be useful to take note of what can be understood to a continuing offence. The issue is no longer *res integra* having been answered by this court in *State of Bihar v. Deokaran Nenshi* (1972) 2 SCC 890. Para 5 may be usefully noticed in this regard.

"5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or 6 complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

10. The question that has posed for an answer has nothing to do with the provisions of Section 178 (b) or (c). What has to be really determined is whether the exception carved out by Section 179 would have any application to confer jurisdiction in the courts situated in the local area where the parental house of the wife is located.

11. To answer the above question, one will have to look into the Statement of Objects and Reasons of the Criminal Law [2nd Amendment Act, 1983 (Act 46 of 1983)] by which Section 498A was inserted in the Indian Penal Code. The section itself may be noticed in the first instance:

"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."

12. Section 498A of the Indian Penal Code was introduced by the Criminal Law (second amendment) Act, 1983. In addition to the aforesaid amendment in the Indian Penal Code, the provisions of Sections 174 and 176 of the Code of Criminal Procedure, 1973 relating to inquiries by police in case of death by suicides and inquiries by magistrates into cause of such deaths were also amended. Section 198A was also inserted in the Code of Criminal Procedure with regard to prosecution of offences under Section 498A. Further by an amendment in the first schedule to the Cr.PC the offence under Section 498A was made cognizable and non-bailable. of considerable significance is the introduction of Section 113A in the Indian Evidence Act by the Criminal Law (second amendment) Act, 1983 providing for presumption as to abetment of suicide by a married woman to be drawn if such suicide had been committed within a period of seven years from the date of marriage of the married woman and she had been subjected to cruelty. Section 113A is in the following term:

"113-A. Presumption as to abetment of suicide by a married woman.- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.- For the purposes of this section, "cruelty" shall have the same meaning as in section 498-A of the Indian Penal Code (45 of 1860)."

13. The object behind the aforesaid amendment, undoubtedly, was to combat the increasing cases of cruelty by the husband and the relatives of the husband on the wife which leads to commission of suicides or grave injury to the wife besides seeking to deal with harassment of the wife so as to coerce her or any person related to her to meet any unlawful demand for any property, etc. The above stated object of the amendment cannot be overlooked while answering the question arising in the present case. The 8 judicial endeavour must, therefore,

always be to make the provision of the laws introduced and inserted by the Criminal Laws (second amendment) Act, 1983 more efficacious and effective in view of the clear purpose behind the introduction of the provisions in question, as already noticed.

14. "Cruelty" which is the crux of the offence under Section 498A IPC is defined in Black's Law Dictionary to mean "The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (Abuse, inhuman treatment, indignity)". 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 illtreated are aspects that cannot be ignored while understanding the meaning of the expression "cruelty" appearing in Section 498A of the Indian Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatize the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress cause by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place.

15. The Protection of Women from Domestic Violence Act, as the object behind its enactment would indicate, is to provide a civil remedy to victims of domestic violence as against the remedy in criminal law which is what is provided under Section 498A of the Indian Penal Code. The definition of the Domestic Violence in the Protection of Women from Domestic Violence Act, 2005 contemplates harm or injuries that endanger the health, safety, life, limb or wellbeing, whether mental or physical, as well as emotional abuse. The said definition would certainly, for reasons stated above, have a close connection with Explanation A & B to Section 498A, Indian Penal Code which defines cruelty. The provisions contained in Section 498A of the Indian Penal Code, undoubtedly, encompasses both mental as well as the physical well-being of the wife. Even the silence of the wife may have an underlying element of an emotional distress and mental agony. Her sufferings at the parental home though may be directly attributable to commission of acts of cruelty by the husband at the matrimonial home would, undoubtedly, be the consequences of the acts committed at the matrimonial home. Such consequences, by itself, would amount to distinct offences committed at the parental home where she has taken shelter. The adverse effects on the mental health in the parental home though on account of the acts committed in the matrimonial home would, in our considered view, amount to commission of cruelty within the meaning of Section 498A at the parental home.

The consequences of the cruelty committed at the matrimonial home results in repeated offences being committed at the parental home. This is the kind of offences contemplated under Section 179 Cr.P.C which would squarely be applicable to the present case as an answer to the question raised.

16. We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Indian Penal Code.”

9. In view of the above discussion and relying on the decision in Rupali Devi’s case (supra), I do not find any merit in the instant revision and the revision is dismissed on contest.

10. Case diaries to be returned to the learned Public Prosecutor-in-Charge.