

(2022) 06 CAL CK 0062
In the Calcutta High Court
Case No : Criminal Revision No. 197 Of 2020

Pawan @ Kewal Goel @ Kewal Krishan APPELLANT
Vs
State Of West Bengal & Anr. RESPONDENT

Date of Decision : 20-06-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 41A, 161, 164
Indian Penal Code, 1860 — Section 406, 498A
Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2022) 06 CAL CK 0062

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

Advocate : Moyukh Mukherjee, Sidhartha Sharma, Aman Kataruka, Naresh Bhalodia, Md. Zohaib Rauf , Arijit Ganguly, Shiladitya Banerjee

Final Decision : Allowed

Judgement

Ajoy Kumar Mukherjee, J

1. This revisional application has been preferred for quashing of the proceeding in connection with Bidhannagar Police Station case no. 2 of 2019 dated 7.1.2019 under Sections 498A/406 of the Indian penal Code, 1860 read with Sections 3 and 4 of the Dowry Prohibition Act which is pending before the court of learned additional Chief Judicial Magistrate, Bidhannagar.

2. It has been contended by the petitioner that the petitioner is the uncle-in-law of the opposite party no. 2, who has initiated the above-mentioned impugned proceeding. The said opposite party no. 2/wife has arrayed her husband, father-in-law, brother-in-law, mother-in-law and the present petitioner who is her uncle-in-law.

3. In the FIR, the opposite party no. 2 wife has alleged that after wedding she came to learn that her husband Amit Goel was divorced once and his previous marriage fell apart due to torture committed by the in-laws. The informant/

opposite party No. 2 was also subjected to regular physical and mental torture by her husband and in laws on account of demand for dowry and despite several gifts being sent to her husband, such marriage was still falling apart and the informant could not resolve the situation and was forced to leave her matrimonial house. On 31.12.2016, the informant was seriously assaulted by her in laws and was thrown out of her matrimonial house. Such incident repeatedly occurred on several times. On 3.1.2019, the informant went to her matrimonial home with her parents to resolve the disputes, but she was again assaulted and she got several injuries on her body.

4. During investigation, the present petitioner was served notice under Section 41A which he had duly complied and also obtained anticipatory bail.

5. Learned counsel for the petitioner Mr. Moyukh Mukherjee strenuously argued that it transpires from a bare perusal of the written complaint that there is no allegation against the present petitioner who resides separately as reflected from the complaint itself but merely because he is one of the relative of the husband of the opposite party no. 2, so he has been arrayed as accused person in the instant case. On 13.2.2019, the informant with her family members along with police officers had seized all the articles belonging to the informant including some belongings of her mother-in-law. Actually, the informant had no intention in continuing the marriage and left her matrimonial home in December 2016 on her own accord. It is further submitted that the informant in a designed and calculated manner left her matrimonial home with her belongings and as a means to harass and vex the petitioner, has instituted this false case which does not disclose any ingredient of the Sections under which the present petitioner has been indicted. The complaint has not disclosed any specific overt act on the part of the present petitioner, on the basis of which the allegation can be sustained under Sections 498A of the Indian Penal Code. The allegation under section 406 of Indian Penal Code is also not applicable as the petitioner had taken away all her belongings on multiple occasions from 3.1.2109 to 13.2.2019. It is further argued on behalf of the petitioner that the present petitioner does not reside with the other family members and he is wholly disconnected with the family affairs of the informant and the complaint does not mention any specific overt act on petitioner's part which can suggest that he had inflicted any kind of cruelty with respect to any demand for dowry or has committed criminal breach of trust. In this context, Mr. Mukherjee learned counsel appearing for the petitioner relied upon the Apex Court judgments reported in (2022) SCC online Supreme court 162, (2010) 7 SCC 667 and (2009) 10 SCC 184.

6. I have gone through the materials in the case diary. First of all, it appears that though in the written complaint the name of the present petitioner transpired at the bottom of the complaint as accused no. 3 but in the body of said written complaint, allegation against present petitioner is that she was forced to leave her matrimonial home as all her in-laws including father-in-law, mother-in-law, elder brother-in-law and her husband were fringed against her, as she could not

bring dowry according to their demand from her parents and on 31st December , 2016 she was seriously assaulted by in-laws and thrown her on the road like previous occasions. In paragraph 6 of complaint she has given list of offences allegedly committed by her in-laws and in paragraph 7, of complaint she has given list of her articles and ornaments allegedly valued approximately rupees two crores. On the basis of aforesaid omnibus allegation against in-laws the present petitioner (uncle-in-law) has been arrayed and the proceeding was started. During investigation police collected injury certificate which does not contain any history of assault, nor reflects any involvement of the present petitioner. In the information dated 3.1.2019, she has also made a general allegation that her husband and in-laws refused to co-operate with her and abused and harassed her physically and mentally without attributing any particular allegation against anyone. The statement of father and mother of the alleged victim recorded under Section 164 of the Code of Criminal procedure, during investigation, only go to show that on 31.12.2016 her husband and mother-in-law and uncle-in-law and all other people at her matrimonial house had driven her from her matrimonial house after assaulting her physically.

7. Alleged victim has also made her statement before the Magistrate under Section 164 of the Code of Criminal Procedure wherein she has only stated that her in laws assured her father and as per request of the present petitioner and others, the situation was managed by expressing false apology. Neither in the aforesaid 164 statement nor in the statement recorded under Section 161 of the code of criminal procedure any specific allegation has been attributed against the present petitioner, save and except an omnibus allegation that all her in laws involved with the alleged crime. It appears that police subsequently recorded the statement of one Kamal Agarwal, S. Beriwal and Ajoy Gupta, but in those statements also no specific allegation has been attributed against the present petitioner, though said statements implicate other accused person.

8. In this context, law is well settled and I may profitably refer paragraph 18 of the judgment of Kahkashan Kausar @ Sonam and others vs. State of Bihar & others reported in 2022 SCC Online SC 162.

"18.The above mentioned decisions clearly demonstrate that this court has at numerous instances expresses concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgements that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgements has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie is made out against them."

9. In an earlier case, Neelu Chopra and another vs. Bharti reported in (2009) 10 SCC 184, paragraphs 9 and 10 reads as under:

"9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. 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 of that offence.

10. When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of the process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein, on the basis of a vague and general complaint which is silent about the precise acts of the appellants."

10. In the judgment of Preeti Gupta and Another vs. State of Jharkhand and another reported in (2010) 7 SCC 667, Hon'ble Apex court was pleased to hold in paragraphs 29 to 33 as follows:-

"29. Admittedly, Appellant 1 is a permanent resident of Navasari, Surat, Gujarat, and has been living with her husband for more than seven years. Similarly, Appellant 2 is a permanent resident of Goregaon, Maharashtra. They have never visited the place where the alleged incident had taken place. They had never lived with respondent 2 and her husband. Their implication in the complaint is meant to harass and humiliate the husband's relatives. This seems to be the only basis to file this complaint against the appellants. Permitting the complainant to pursue this complaint would be an abuse of the process of law.

30. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

31. The courts are receiving a large number of cases emanating from Section 498A of the Penal Code which reads as under:

"498-A 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.”

32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. As the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned member of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to be best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.”

11. Admittedly, as per written complaint, the present petitioner’s residential address as reflected in the written complaint is different with that of complainant’s husband’s family members, who are also the accused in the said case and upon perusal of the contents of the first information report as well as the materials in the case diary, including statements of witnesses recorded during investigation, it reveals that general allegations are levelled against the present petitioner stating that her in-laws , which includes present petitioner, had harassed her without making any specific or distinct allegation against the present petitioner and the present petitioner has not been attributed to any specific role in furtherance of the general allegation made against him. This makes a situation wherein it is difficult for the court to ascertain the role played by this present petitioner in furtherance of the alleged offence which is general and omnibus in nature, and does not warrant prosecution.

12. Therefore upon consideration of the aforesaid circumstances and in the absence of any specific role attributed to the present petitioner, in the alleged crime, it would be unjust if the petitioner is forced to go through the trial on the basis of general and omnibus allegation where there is hardly any chance of conviction of the present petitioner and will eventually lead to an acquittal in respect of the present petitioner. The proceeding in respect of the present petitioner therefore liable to be quashed.

13. The proceeding being Bidhannagar Police Station case no. 2 of 2019 dated

7.1.2019 under Sections 498A/406 of the Indian penal Code, 1860 read with Sections 3 and 4 of the Dowry Prohibition Act against the present petitioner pawan @ kewal Goel @ kewal krishan is quashed.

14. CRR 197 of 2020 is accordingly allowed but without any cost.

There will be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.