

**(2021) 06 CAL CK 0110**  
**In the Calcutta High Court**  
**Case No : Criminal Revision No. 1554 Of 2017**

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|--------------------------------|----|------------|
| Tania Banerjee (Nee Mukherjee) | Vs | APPELLANT  |
| State Of West Bengal & Anr.    |    | RESPONDENT |

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**Date of Decision :** 23-06-2021

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 301(2), 397, 399, 401, 482  
Indian Penal Code, 1860 — Section 406, 498A

**Citation :** (2021) 06 CAL CK 0110

**Hon'ble Judges :** Bibek Chaudhuri, J

**Bench :** Single Bench

**Advocate :** Ankit Agarwala, Alotriya Mukherjee, Swapan Banerjee, Suman De, Shyamal Kanti Banerjee, Jayanta Datta, Nipasree Tagore, Ashoke Das, Sudip Pandit, Ratan Pathak

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## Judgement

Bibek Chaudhuri, J

The instant criminal revision under Section 401 read with Section 482 of the Code of Criminal Procedure challenging legality, validity, correctness and

propriety of the order dated 3rd January, 2017 passed by the learned Additional Sessions Judge, 18th Court at Alipore, South 24-Parganas in Criminal

Motion No.485 of 2015 is filed by the de facto complainant of Garfa Police Station Case No.181 dated 28th April, 2013.

The case of the petitioner is that her marriage was solemnized with Avik Banerjee, opposite party No.2 herein as per Hindu Rites and Customs on

18th January, 2012. She gave birth to a female child on 1st October, 2012. After the birth of the said child matrimonial discord started to crop up

between the petitioner and the opposite party No.2 on the ground as to the reason that the petitioner gave birth to a child within 9/10 months of

marriage. Finally the petitioner was driven out from her matrimonial home which prompted her to lodge a written complaint on 19th April, 2013 before

the Officer-in-Charge, Garfa Police Station. On the basis of the said written complaint formal F.I.R. was drawn up under Sections 498A/406 of the

Indian Penal Code against the opposite parties and Garfa Police Station Case No.181 of 2013 dated 28th April, 2013 was registered. Police took up

the case for investigation. Charge sheet was filed against the opposite party No.2 and one Bacchu Chatterjee @ Arun Chatterjee before the learned

Chief Judicial Magistrate, Alipore. The case was subsequently transferred to the Second Court of the learned Judicial Magistrate, South 24-Parganas.

Said Bacchu Chatterjee @ Arun Chatterjee filed an application before the Trial Court with a prayer to discharge him from the said case. By an order

dated 24th September, 2015 said Bacchu @ Arun Chatterjee was discharged. The opposite party No.2 also filed similar application which was,

however, rejected by the learned Magistrate.

Opposite party No.2 challenged the said order in revision before the learned District Judge at Alipore, South 24-Parganas in Criminal Motion No.485

of 2015. In the said criminal revision the petitioner was not made a party respondent. The said criminal motion was heard by the learned Additional

Sessions Judge, 18th Court at Alipore and vide order dated 3rd January, 2017 the learned Judge allowed the criminal revision filed by the opposite

party No.2 and discharged him from the case.

I have heard the learned advocates for the petitioner and the opposite party No.2 as well as the learned P.P.-in-charge for the opposite party No.1.

The learned Additional Sessions Judge allowed the Criminal Motion No.485 of 2015 and discharged the opposite party No.2 on the ground that the de

facto complainant/petitioner did not make any allegation of cruelty within the meaning of Section 498A and criminal misappropriation of

â??stridhanâ?? property within the scope of Section 406 of the Indian Penal Code. Therefore, no prima facie case was made out against the opposite

party No.2 and he was accordingly discharged.

Learned Advocate for the petitioner at the outset has brought my attention to the written complaint filed by the de facto complainant before the

Officer-in-Charge, Garfa Police Station. In the written complaint it is stated by the petitioner that after marriage all her gold ornaments and nuptial

presents were taken away by her mother-in-law Banani Chatterjee. She also instigated the husband of the petitioner to misbehave with her. It is also

alleged by the de facto complainant that during her pregnancy she was neglected by all means and she became physically sick. After she gave birth to

a female child on 1st October, 2012, her father repeatedly requested the opposite party No.2 and his mother to take the de facto complainant back to

her matrimonial home along with new born baby but they refused to accept them. The de facto complainant tried to talk to her husband over telephone

but he always disconnected her call.

It is further submitted by the petitioner that the police seized various items from the matrimonial home of the de facto complainant. In the charge sheet

it is specifically stated by the Investigating Officer that the opposite party No.2 and his maternal uncle used to torture the de facto complainant both

physically and mentally and they also tried to misappropriate the stridhan articles of the de facto complainant dishonestly. Learned Advocate for

the petitioner submits that the learned Additional Sessions Judge, 18th Court at Alipore exceeded his jurisdiction under Section 397 read with Section

399 of the Code while disposing of Criminal Motion No.485 of 2015 without considering the fact that before discharging an accused of a criminal case

the Trial Judge is statutorily under obligation to hear the de facto complainant. The learned Judge did not even consider that the de facto

complainant/the petitioner was not made a party in Criminal Motion No.485 of 2015. Therefore, she did not get any opportunity to place her case

before the learned Additional Sessions Judge, 18th Court at Alipore.

According to the learned Advocate for the petitioner the impugned order is palpably illegal and liable to be set aside.

In support of his contention, learned Advocate for the petitioner refers to a decision of this Court in the case of Ratna Ghosh Moulik Vs. Ranjit Kumar

Biswas and Anr. reported in 2001 SCC OnLine Cal 421.

Paragraph 11 of the said judgment is relevant and quoted below:

11. The defacto complainant even has been recognised and who can also file a NARAJI against such final report. The defacto complainant's

right has been recognized for even setting aside an order of acquittal passed in a criminal trial. The defacto complainant in the present Code can also

participate in the Sessions trial by assisting the learned Public Prosecutor

provided in section 301(2) of the Code of Criminal Procedure. The Supreme Court in the decision of J.K. International v. State (Government of N.C.T. Delhi) reported in (2001) 3 SCC 462 has also held that the defacto complainant can not be debarred an audience in connexing with a case instituted on police report before the High Courtt at the stage of quashing of the FIR. Further in Bhagwant Singh v. Commissioner of Police (AIR 1985 SC 1285) the Supreme Court has held that before accepting the prayer for discharge the Court has to notify the complainant.â??

Learned advocate for the opposite party No.2 submits before me that practically no allegation within the meaning of Section 498A of the Indian Penal Code is forthcoming from the F.I.R. filed by the de facto complainant/petitioner. If the F.I.R. is closely examined, it would be found that the F.I.R. only contains mental torture allegedly inflicted upon her by her husband (O.P.No.2).

It is also submitted by the learned advocate for the opposite party No.2 that all kinds of torture upon the married wife by her matrimonial relations does not come within the purview of cruelty envisaged in explanation I and II of Section 498A of the Indian Penal Code. The petitioner has not disclosed that she was physically tortured by opposite party No.2 in such a manner so as to cause grave injury to her or to drive her to commit suicide. There is also no allegation against the opposite party No.2 to coerce illegal demand of dowry. Therefore, there is no scope to interfere the impugned judgment passed by the learned Additional Sessions Judge in the Criminal Motion No.485 of 2015.

Having heard the learned advocates for the parties and on careful perusal of the orders passed in Criminal Motion No.485 of 2015 this Court finds that the de facto complainant /petitioner was not made party in Criminal Motion No.485 of 2015. No notice was served upon her. Relying on the principles laid down in paragraph 11 of the decision of Ratna Ghosh Moulik (supra), this Court is of the view that the petitioner /de facto complainant was required to be heard by the learned Revisional Court before passing any order discharging the opposite party No.2.

It is pointed out by the learned advocate for the petitioner that the learned Judicial Magistrate, 2nd Court at Alipore also did not serve any notice upon the de facto complainant while discharging one Bacchu Chatterjee @ Arun

Chatterjee from A.C.G.R. No.2881 of 2013. Therefore, the petitioner may be allowed to agitate the said fact in Criminal Motion No.485 of 2015.

Against the order dated 24th September 2015 passed by the learned Judicial Magistrate, 2nd Court at Alipore in A.C.G.R. No.2881 of 2013

discharging accused Bacchu Chatterjee @ Arun Chatterjee, the petitioner has not filed any criminal revision either before the learned Sessions Judge or before this Court.

In the instant application such prayer made by the learned advocate for the petitioner cannot be allowed.

In view of the above discussion, the impugned order passed in Criminal Motion No.485 of 2015 by the learned Additional Sessions Judge, 18th Court

at Alipore on 3rd January, 2017 is set aside. The learned Additional Sessions Judge, 18th Court at Alipore is directed to hear out Criminal Motion

No.485 of 2015 afresh after adding the de facto complainant/petitioner as opposite party No.2 and serve a notice upon her and give an opportunity of hearing to her.

Since the instant matter is pending for long, the learned Additional Sessions Judge is directed to dispose of the above mentioned criminal motion as per the direction passed by this Court preferably within three months from the date.