

**IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side**

**Present:
The Hon'ble Justice Sudip Ahluwalia**

C.R.R 537 of 2015

**Dr. Suvendu Mallick
Vs.
Smt. Shilpi Mallick**

**For the Petitioners : Mr. Sudipta Maitra,
Mr. Santanu Lahiri,
Ms. Sruti Lahiri,
Mr. Vijay Verma,
Mr. Biplab Das,**

**For the O.P. No. 1 : Mr. Kallol Mondal,
Mr. Anand Keshari,
Mr. Kishan Roy,**

For the State : Mr. Amarta Ghose,

**Heard On : 15.06.2015, 29.06.2015,
06.07.2015 & 07.07.2015**

Judgment On : 7.8.2015

SUDIP AHLUWALIA, J. -

This revisional application was filed for quashing the proceedings pending in the Court of the Ld. Additional Chief Judicial Magistrate, Serampore, in G.R. Case No. 165 of 2015, arising out of Serampore P.S Case no. 51 of 2015 dated 27.01.2015 under Section 498A of the IPC.

2. The petitioner No. 1 is the husband of the Defacto-Complainant. The petitioner no. 2 is the son of the petitioner no. 1. The petitioner nos. 3 and 5 are the brothers of petitioner no. 1, while petitioner nos. 4 and 6 are respectively the wives of those two brothers. The petitioner nos. 1 and 2 are residents of 61, Raja Rammohan Roy Sarani, under Police Station Serampore, while all the remaining four petitioners are residents of 6G, Lenin Sarani, also under Police Station Serampore.
3. In the FIR lodged by the complainant, she had stated that she had entered into a registered marriage with the petitioner no. 1 on 28th November, 2013 in presence of his son from his first marriage, being the petitioner no. 2. A translated version of the allegations made in the FIR in Bengali would read as follows:-

“Respected Sir,

*I got married to Dr. Suwendu Mallick by a registered marriage on 28th November, 2013. At the time of marriage the son of Dr. Mallick from his first wife, namely Subhankar Mallick, 20 years old, was present. On the basis of various promises made by them I accepted them and married Dr. Mallick. Some days after marriage I come to know that Dr. Mallick had been, and was in contract with various women. For this reason his first wife was forced to commit suicide on 10th of July, 2011. On account of my knowing about all these matters, Dr. Mallick, his elder brother Ramen Mallick, younger brother Rajen Mallick and son Shubhankar Mallick, along with their wives started to inflict mental and physical cruelty upon me in various ways. Several times I requested my husband not to ruin our family in this manner. But he was not prepared to listen to anything. **On the contrary he and his family members are inciting me to commit suicide. With the purpose of driving out***

of the house they are inflicting various forms of cruelty upon me. I am unable to bear it any further.

I therefore, request you, to take strong steps against Dr. Mallick and his family members to save my life. I will also be ever grateful for the cooperation in securing my justified rights.

My elder 'Bhasur and Jaa' –

Sri Ramen Mallick,

Arpita Mallick

My younger 'Dewar and Jaa' -

Sri Rajen Mallick,

Rachna Mallick,

Son's name - Shubhankar Mallick.....”

4. It has been contended on behalf of the petitioners that the FIR as lodged does not mention anything about any violence being used against the complainant, nor there is any allegation whatsoever that she was subjected to any cruelty in pursuance of any monetary or other dowry related demand. It is also contended that the FIR as such does not indicate any incident of mental or physical torture of such nature or magnitude as would drive the complainant to committing suicide or to cause serious injury to her mental or physical health, and therefore does not fulfil the requirements enumerated in explanations (a) and (b) to Section 498-A of the IPC 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 willful 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.”

5. On the other hand the contentions of the Opposite Parties, being the State as well as the Defacto-Complainant are that there is enough material collected against the petitioners during investigation to establish the offence under Section 498A of the IPC, and that it is a fallacious proposition that the FIR as lodged does not indicate any ingredients to constitute the offence under Section 498-A. They have asserted that the according to the FIR the petitioners have been instigating the complainant to commit suicide and she has become so desperate that she has specifically stated therein that she is unable to bear the torture being inflicted upon her anymore.
6. It is an admitted position that the FIR as lodged does not describe anywhere as to how any physical torture or cruelty was inflicted upon the complainant. As such to some extent the contention that the requirement of the possibility of grave injury or danger to the life, limb or at least physical health of the complainant in term of explanation (a) might be ruled out.
7. It is also correct that there is no allegation in the FIR to the effect that the complainant was subjected to harassment with a view to coercing her to meet any unlawful demand for any property of valuable security. On the other hand the FIR itself states that the discord between the parties was on account of the allegedly immoral lifestyle of the complainant's husband, and the support he was getting from the rest of his family members when the complainant requested him to mend his ways for a harmonious family life. It is also a fact that in the face of such alleged urgings, the complainant does not appear to have resorted to anything in the nature of suicidal attempt. It has been argued that such instigation, even if admitted for the

sake of argument, in itself are not sufficient or likely to drive the complainant to commit suicide, which is one of the requirements of explanation (a) to Section 498-A.

8. However, the element of “mental cruelty” upon the complainant by way of such instigations cannot be totally ruled out. Whether the nature and magnitude of the same is sufficient to cause a danger to her mental health is essentially a question of detailed analysis, and there cannot be any water-tight yardstick to rule out any such danger summarily. So, it would be extremely undesirable to remain smug on a premise that such verbal instigations are not so severe or of such nature as to actually drive the woman concerned to commit suicide, simply because there is nothing to indicate from the FIR, that the complainant ever took any actual step in the nature of an attempted suicide. It cannot be gainsaid that there is any objectively assessable threshold to be crossed in order to determine how repeatedly or intensely a person can be actually instigated to commit suicide. That essentially depends upon various factors and circumstances peculiar to each case, the commonest of which would obviously be the sensitivity and mental make-up of the intended victim. One person can be so sensitive as to resort to a desperate act even on a casual instigation. Another who is mentally tough, may not be affected even if repeatedly and intensely instigated. Thus, in the view of this Court, trying to test the allegation of instigations in order to conclude whether they are sufficient to actually drive the complainant towards suicide would be too dangerous a proposition for the purpose of ruling out mental cruelty upon her. Even otherwise, there can hardly be any documentation of danger to mental health of the complainant, which as already observed earlier, is a question of detailed analysis and intricate facts.
9. In the FIR the complainant had specifically gone on to say, “I am unable to tolerate such torture any further.” So it could as well mean that she was virtually on the threshold of suffering a severe mental trauma and therefore thought it fit and proper to approach the Police authorities for protection and appropriate action. In the given circumstances it cannot be said that the FIR as lodged absolutely does not disclose any allegations indicating ingredients of any cognizable offence whatsoever.

10. But in all fairness, it can be said that the thrust of the allegations is essentially directed against the petitioner nos. 1 and 2 alone. Both of them were present at the time of marriage of the parties and reside in the same house. Even in the FIR it has been said that the petitioner no. 1 is not prepared to listen to the complainant's request of not ruining their family life. Only at that point the other petitioners have been roped in with the allegation that they along with the petitioner no. 1 are instigating the complainant to commit suicide. It needs to be remembered that the petitioner nos. 3 and 6 are not residents of the complainant's own matrimonial house, although their own residence would appear to be somewhere in the vicinity. The allegations against them are also casual and non-specific as would be clear from the highlighted portion in the FIR mentioned above. There is also no mention of any specific dates when the petitioner nos. 3 to 6, who are not actually residents of the complainant's matrimonial house, or the manner in which they allegedly instigated her to commit suicide.

11. In such circumstances the following observations of the Apex Court in the case of **"Geeta Mehrotra & Ors. Vs. State of Uttar Pradesh & Anr."** [2013(1) S.C.C. (Cri) 129] are relevant

*"20. Coming to the facts of this case, when the contents of the FIR are perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names which have been included in the FIR **but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.**"*

12. Similar observations made in **“Neelu Chopra & Anr Vs. Bharti” [2010 CR.I.L.J. 448]** as given below are also relevant in the present case -

“5. In order to lodge a proper complaint, mere mention of the Sections and the language of those Sections is not 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. 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 process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein on the basis of vague and general complaint which is silent about the precise acts of the appellants.”

13. The following observations of the Supreme Court in **“Preeti Gupta & Anr. V. State of Jharkhand & Anr.” [2010 CRI. L. J. 4303]** are similarly applicable to the petitioner numbers 3 to 6 in the present case -

“30. 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. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon.....

36. When the facts and circumstances of the case are considered in the background of legal principles set out in preceding paragraphs, then it would be unfair to compel the appellants to undergo the rigmarole of a criminal trial. In the interest of justice, we deem it appropriate to quash the complaint against the appellants. As a result, the impugned judgment of the High Court is set aside.....”

14. For the aforesaid reasons the revisional application is partially allowed. Proceedings arising out of FIR No. 51 of 2015 dated 27.01.2015 as against the petitioner nos. 3 to 6 are quashed in the circumstances. But the petitioner nos. 1 and 2 shall face the trial in accordance with law. They would however not be precluded from placing their contentions before the Ld. Trial Court when the stage for consideration of charge arrives.

[Sudip Ahluwalia, J.]