

Calcutta High Court

Amar Pal And Ors. vs State Of West Bengal And Anr. on 19 June, 2007

Equivalent citations: 2007 (4) CHN 822, 2007 CriLJ 4150

Author: S Talukdar

Bench: S Talukdar

ORDER S.P. Talukdar, J.

1. The opposite party No. 2 I herein, Sutapa Pal, submitted a written complaint dated 9-10-2000 before the Inspector-in-Charge, Barasat Police Station, District-24-Parganas (North).
2. She claimed that after her marriage with petitioner No. 1, Amar Kumar Pal on 19-4-1998. she started living with her husband and his parents at her matrimonial home.
3. During her stay, much was said about the insufficiency of the dowry given at the time of the said marriage. There had been consistent demands in this regard. Times without number, she was subjected to humiliation and mental and physical torture during such stay. There had been such incidents on 27-12-1998, 21-1-1999. 7-3-1999 and 22-3-1999. Being unable to bear with such consistent torture by her husband and his parents, she had to take shelter at her parents place.
4. On 22-3-1999, she was escorted to her husband's place by her parents, but was not received well. This was repeated on 31st March, 1999. She was again subjected to severe torture by her husband and his parents on 18-4-1999, when her parents visited their place with gifts on the occasion of marriage anniversary.
5. On 21st May, 1999 being assured of her safety and security by local relatives, well-wishers and a panchayat member, she again went back to her husband's place. But there had been no change in functional behaviour.
6. The petitioner No. 1 filed a matrimonial suit before the learned Court of District Judge, Barasat, 24-Parganas (North) on false and baseless allegations.
7. During her stay at her husband's place, her Stridhan properties including gold ornaments and valuable articles were left with her mother-in-law, who, however, refused to return the same.
8. Such consistent misbehaviour both physical and mental torture, thereafter put the complainant under painful compulsion to seek redress before a Court of law.
9. Such written complaint was treated as FIR and the matter was taken up for investigation. After completion of investigation, the police authority submitted charge sheet against the petitioners for the offences under Sections 498A/406 of I.P.C.
10. The petitioners being the husband of O. P. No. 2 and his parents filed this application under Section 482 of Cr. P.C. praying for quashing of the proceeding being FIR No. 605 dated 9-10-2000 as well as charge sheet No. 22 dated 25-1-2002.

11. Grievances of the petitioners, as ventilated in the said application under Section 482 of Cr. P.C. may briefly be stated as follows:

12. The marriage between petitioner No. 1 and opposite party No. 2 was held on 17-4-1998 under the Special Marriage Act and this was followed up by a social function, which took place on 19-4-1998. From the very date of marriage, O.P. No. 2 was cruel in behaviour towards her husband. This made it difficult for the petitioner No. 1 to even discharge his official work as Assistant Engineer properly. He was compelled to lodge general diary on 28-3-2000 and again on 26-5-2000 at the local Hastings Police Station. On 18-7-2000, the petitioner No. 1 filed a Matrimonial Suit being No. 881 of 2000 before the learned Court of District Judge, Barasat, 24-Parganas (North). His wife received the summons on 19-8-2000 while staying at her parents place at 491 Dura Durn Port, Kolkata-700 055.

13. Thereafter opposite party No. 2 lodged a complaint under Sections 498A/406 of I.P.C. on 9-10-2000. The petitioner Nos. 2 and 3 being the parents of the petitioner No. 1 used to live at their own house at Duttapukur, 24-Parganas (North) which is far away from the Government accommodation of the petitioner No. 1. The wife of the petitioner No. 1, being the O. P. No. 2 herein, had, in fact, no functional relationship with petitioner Nos. 2 and 3, not even access through telephone.

14. The mother (petitioner No 3 herein) of the petitioner No. 1 underwent a major surgical operation and was released from hospital on 9-4-1999. As a son, petitioner No. 1 being accompanied by his wife went to his parents place at Duttapukur with the idea to take care. But it could not be possible for consistent misbehaviour of the wife of such petitioner No. 1, who was, thus, compelled to come back to his residential accommodation. There the couple lived for about seven months before the petitioner No. 1 was finally deserted, that is, w.e.f. 7-2-2000.

15. The written complaint, which was treated as FIR, was filed in a way of counterblast to the matrimonial suit filed by the petitioner No. 1. The petitioners sought for anticipatory bail and were finally favoured with an order of bail. This antagonized the O.P. No. 2 further, who then filed an application under Section 36 on 22-1-2001 praying for pendente lite alimony as well as an application under Section 125 of Cr. P.C. seeking maintenance. As directed by the learned Court in connection with the said application under Section 36 of the Special Marriage Act, the O.P. No. 2 is enjoying a sum of Rs. 2,500/- per month w.e.f. 1-3-2002 which she is getting from her husband.

16. During investigation, there was no witness in support of the false and frivolous allegation made by the O.P. No. 2 in the written complaint and no such statement under Section 161 of Cr. P.C. was recorded. Exercising undue influence, the said O.P. No. 2 and her family could succeed to get the investigation authority shifted. Police seized the alleged "Stridhan properties" in an unusual fashion from the quarter and the house of the petitioners. All such articles, as claimed by the complainant/wife, were returned. Many articles, which even did not find mention in the FIR, were also seized on the basis of false claim made by O.P. No. 2. The entire investigation was held in an indicative manner and this finally resulted in submission of charge sheet under Sections 498A/406 of I.P.C. against the present petitioners.

17. It is claimed that such charge sheet on the basis of investigation, which was conducted in a suspicious and vindictive manner, is liable to be quashed.

18. Mr. Sudipto Moitra, as learned Counsel for the petitioners, claimed that there could be no reason to suspect commission of any offence, as there are no tangible facts to constitute any suspicion.

19. Mr. Moitra submitted that the criminal case was started in a way of counterblast to the matrimonial suit, which was filed by the petitioner No. 1 praying for a decree of divorce. The said matrimonial suit was dismissed by the learned Trial Court. Certain observations made by the learned Trial Judge in connection with the disposal of the said matrimonial suit go a long way to brush aside the allegations made in the written complaint.

20. It was submitted on behalf of the petitioners that O.P. No. 2 had hardly any scope to stay at her in-laws at Duttapukur. It was then submitted that the allegations made in the written complaint suggest that the cause of action, if any, took place within Hastings P.S. and it was also claimed that a complaint was lodged in Hastings P.S. on 14-5-2000 by the father of the O.P. No. 2, but no case was registered on its basis. According to Mr. Moitra, there could be no scope for filing a fresh complaint and that too, at Barasat P.S.

21. Mr. Moitra submitted that successive FIR's alleging self-same offence is unwarranted in law. It has also mentioned that shifting of the venue from Hastings place to Barasat P.S. was also a calculated ploy. According to learned Counsel for the petitioners, the criminal proceeding was started with the sole intention to harass and humiliate the petitioners. O.P. No. 2 filed an application before the "Jana-Abhijog Cell" headed by the District Magistrate, 24-Parganas (North) for settlement of the matrimonial dispute and till then, she did not lodge any FIR indicating thereby that the subsequent complaint is just an afterthought.

22. Mr. Moitra submitted that the judgment passed in the matrimonial suit is a judgment in rem as contemplated under Section 41 of the Indian Evidence Act and the finding made therein is binding upon the Criminal Court.

23. Attention of the Court was drawn to the various observations made by the learned trial Judge in connection with the said matrimonial suit. The opposite party No. 2, as respondent in the said suit, repeatedly deposed that if her husband realizes his fault and repents for his wrongful acts and misbehaviour and if her husband changes himself, she could forget and condone all the misdeeds of her husband.

24. According to the learned Trial Judge, there was a fair chance of reunion between the parties. On behalf of the petitioners it was further submitted that the dispute between the petitioner No. 1 and his wife essentially cropped up due to clash of egos and it could not be said that the marriage between them has broken down irretrievably.

25. Mr. Moitra, deriving inspiration from such observations made by the learned trial Court in connection with the matrimonial suit, submitted there could be no substance in the written

complaint and the alleged cruelty inflicted on O.P. No. 2 could not be said to be in the nature of any unlawful demand for there could be any such wilful conduct on the part of the petitioners which could drive the woman to commit suicide or to cause grave injury or danger to life and limb etc.

26. It was further submitted that the petitioner Nos. 2 and 3 had absolutely no role to play in the life of the petitioner No. 1 and his wife and the alleged recovery of Stridhan property was rather in response to the repeated requests made by the petitioner No. 2 vide letters dated 11-12-2000 and 8-3-2001.

27. The opposite party No. 2, as a teacher of a Secondary School, has her own independent income. She has already been paid an amount of more than Rs. 1,50,000/- towards maintenance and this reflects the attitude of the petitioners towards the O. P. No. 2, who, thus, could not have had any justification to initiate a false criminal case.

28. Mr. Moitra, deriving inspiration from the decision in the case of N. Suriyakala v. A. Mohandoss and Ors. submitted that O.P. No. 2 cannot get any benefit by sending her husband or his parents to jail In the said case, the petitioner was pursuing her maintenance case and had the option to file a suit for damages, which if filed would be decided on its own merits. But the Apex Court did not choose to exercise its discretionary jurisdiction under Article 136 and thereby interfere with the judgment of the High Court quashing the criminal case.

29. On behalf of the petitioners, reference was made to the decision in the case of R. Viswanathan and Ors. v. Rukun-al-Mulk Syed Abdul Wajid and Ors. and this was in the context of Section 41 of the Indian Evidence Act. It was submitted that the observations made by the learned Trial Court in connection with the matrimonial suit literally wiped out the allegations made in the written complaint, which was treated as FIR.

30. Section 41 of the Evidence Act relates to relevancy of certain judgments in probate, matrimonial, admiralty or insolvency jurisdiction. The Apex Court in connection with the said case observed that the conclusiveness from the point of view of the law and evidence will adopt to a judgment, order or decree only if it falls within the categories in Section 41.

31. Having regard to the factual backdrop of the said case, it cannot be said that the said decision lends much support to the present petitioners.

32. Referring to the decision in the case of V.M. Shah v. State of Maharashtra and Anr. , Mr. Moitra submitted that the findings, recorded by the Criminal Court, stand superseded by the findings recorded by the Civil Court. Where there are conflicting findings of Civil and Criminal Courts, findings recorded by Civil Court prevail until reversed by the appellate Court after duly considering the same and weighing the evidence afresh.

33. Relying upon the decision in the case of Md. Salauddin v. State of West Bengal reported in 2002 (4) CHN page 82, it was submitted by Mr. Moitra that if the allegations in the FIR are without basis, no case can be said to have born and in such circumstances, investigation and filing of charge sheet

are not sustainable.

34. Referring to the decision in the case of Commissioner of Income-tax, Mumbai v. Bhupen Champak Lal Dalai and Anr. , Mr. Moitra submitted that the findings of the Civil Court have definite bearing on the criminal case started against the present petitioners though the prosecution in criminal law and the proceeding before the Civil Court are undoubtedly independent proceedings.

35. In the case of Sushil Kumar Sharma v. Union of India and Ors. reported in 2005 SCC (Cri) 1473, the Apex Court held that mere possibility of abuse of a provision of law does not per se invalidate a legislation. If a provision of law is (sic) and subjected to abuse of process of law, it is for the legislature to amend, (sic) or repeal it, if deemed necessary. It was observed that "it must be presumed, unless the contrary is proved, that administration and application of a particular law would be done not with an evil eye and unequal hand."

36. Mere possibility of abuse does not make a particular legislation bad. It reminds one that there is no evil in the atom, but only in men's soul.

37. It was submitted by Mr. Moitra that Section 498A requires that consequences of cruelty should be such as are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical. Mr. Moitra then submitted that the allegations made in the FIR, thus, cannot constitute any offence under Section 498A of I. P.C.

38. Relying upon the decision in the case of Parveen Kumar and Ors. v. State and Anr. reported in 1998 (2) Crimes 414 : 1998 Cri LJ 1693 it was contended by learned Counsel for the petitioners that mere failure to return property did not constitute offence of criminal breach of trust. It was submitted that in the present case, there had been persistent efforts made by the petitioner No. 1 to return the Stridhan properties and subsequently the same were returned after being seized by the police. It could not be said that any property of the opposite party No. 2 was, thus, misappropriated.

39. Reference was further made to the decision in the case of Vadala Vinay Kumar v. State of A.P. reported in 2006 Cri LJ 1710 while submitting that omnibus allegation that husband was ill-treating the victim by beating, insulting and demanding her to bring money would not come within the meaning of cruelty as defined under Section 498A of I.P.C. Petty quarrels between wife and husband cannot be termed as cruelty to attract the provisions under Section 498A of I.P.C.

40. On the other hand, learned Counsel for the O.P. No. 2, Mr. Chakraborty submitted that the inherent power under Section 482 of Cr. P.C. in order to quash a criminal proceeding can only be exercised in rarest of rare cases. Attention of the Court was invited to the specific acts of torture inflicted upon the O.P. No. 2 by her husband as well as his parents in support of the contention that there is sufficient material in the FIR so as to constitute offences under Sections 498A/406 of I.P.C. and after completion of investigation, police authority submitted charge sheet. In such backdrop, there can be no rational justification for quashing of the proceeding.

41. In the case of Arun Shankar Shukla v. State of U.P. and Ors. the Apex Court observed that the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court. It was further observed that "it is well-nigh settled that inherent power is not to be invoked in respect of any matter covered by specific provision of the Code or if its exercise would infringe any specific provision of the Code."

42. It was submitted on behalf of the O. P./de facto complainant that High Court's power to quash complaint and consequent criminal proceedings should not be exercised where allegations prima facie constitute the offence alleged in the complaint. Such power is only to be exercised to save abuse of process of Court or to secure ends of justice. It is also not in dispute that the truth or otherwise of the allegations in the complaint is a matter of proof. When the materials relied on by the present petitioners require to be proved, no interference can be drawn on the basis of those materials to conclude that the complaint is false (Ref. : Chand Dhanwan (Smt.) v. Jawaharlal and Ors. .

43. Reference was made to the decision in the case of Tapan Kumar Mukherjee v. State of West Bengal and Ors. reported in 1995 Cri LJ 1985 while submitting that when FIR discloses the names of all the petitioners and if the allegations made therein are to be taken as correct, it cannot be said that no offence under Sections 498A and 406 of I.P.C. is disclosed and in such a situation, the learned Single Judge Bench of this Court refused to interfere under Article 226 of the Constitution.

44. Learned Counsel for the O.P. No. 2. while inviting attention of the Court to the FIR and the materials disclosed in course of investigation, submitted that the word "cruelty" relates to human conduct or human behaviour. The cruelty may be mental or physical, intentional or unintentional.

45. Attention of the Court was invited to the observations made by the Apex Court in the case of Shobha Rani v. Madhukar Reddi reported in AIR 1988 SC 12. Such observations may be set out as follows:

A new dimension has been given to the concept of cruelty. Explanation to Section 498A provides that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute cruelty. Such wilful conduct which is likely to cause grave injury or danger to life, limb or health (whether mental or physical of the woman) would also amount to cruelty. 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 would also constitute cruelty.

46. The learned single Bench of this Court in the case of Sahajan Molla v. State and Anr. reported in 2000 C Cr LR (Cal) 266 held that when the petition of complainant and other documents make out a prima facie case against a person, the High Court cannot enter into a debatable area as to which of the two versions of the parties is true. It is not necessary to make a meticulous and thorough study of a case before trial for finding out whether the petitioner was innocent or not. In the said case, the learned Single Bench refused to interfere thereby quash the criminal proceeding after a strong prima facie case was found to have been made out against the petitioner.

47. Learned Counsel for the opposite party/State, Ms. Biswas echoed the submission made on behalf of the O.P. No. 2 that the investigation into an offence is a statutory function of the police and the superintendence thereof is vested in the State Government and the Court is not justified without any compelling and justifiable reason to interfere with the investigation. In this context, reference was made to the decision in the case of Jayant Vitamins Ltd. v. Chaitanyakumar and Ors. .

48. The Apex Court in the case of Mrs. Dhanalakshmi v. R. Prasanna Kumar and Ors. reported in AIR 1990 SC 494 : 1990 Cri LJ 320 observed that in the absence of circumstances to hold prima facie that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere. If the allegations made in the FIR do not appear to be absurd and are not inherently improbable, there can be little scope for interference and no justification for quashing of a criminal proceeding in exercise of this Court's power under Section 482 of Cr. P.C. (Ref. : Mrs. Rupan Deol Bajaj and Anr. v. Kanwar Pal Singh Gill and Anr. .

49. The extraordinary power of the High Court under Article 226 of the Constitution or the inherent power under Section 482 of Criminal Procedure Code in order to prevent abuse of the process of Court or otherwise to secure the ends of justice have been dealt with by various High Courts as well as by the Apex Court in connection with innumerable cases.

50. It is neither possible nor desirable to frame any strict guideline. Fortunately law is not arithmetic and it does not always demand dotting of every I and cutting of every T. Law is made to meet the aspirations of the people and justice is administered in accordance with law in order to respond to the challenges of time and demands of the situation.

51. In the case of State of Haryana and Ors. v. Bhajan Lal and Ors. , certain guidelines, though may not be exhaustive, have been laid down. The following may be reproduced as follows (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of an offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

52. The present case stands on a somewhat different footing.

53. Admittedly, petitioner No. 1 filed a matrimonial suit against O.P. No. 2 praying for a decree of divorce. It is not in dispute that the O.P. No. 2 appeared in the said suit and contested the same. The learned Court after due consideration of relevant facts and materials and having regard to the evidence on record dismissed the suit. The ground of cruelty or desertion could not be established to the satisfaction of the learned Court. It cannot, however, be denied that the cruelty within the meaning of the matrimonial dispute is significantly different from what has been stated in Section 498A of the Indian Penal Code. Though much has been said about the effect of the findings of the Civil Court on a pending criminal matter between the same parties, this Court does not think it necessary to refer to the same while dealing with the instant application under Section 482 of Cr. P.C.

54. What emerges from the allegations made in the written complaint which had been treated as FIR in this case is that the O.P. No. 2 after her marriage with petitioner No. 1 started living together as husband and wife. Within a short time, there had been instances of misbehaviour on the part of the petitioner No. 1. As alleged in the petition of complaint, much of such alleged misbehaviour was associated with demands of dowry. Law does not permit this Court to embark upon an enquiry regarding the genuineness or truthfulness of the grievances made in the petition of complainant, but the said FIR goes a long way to substantiate that the petitioner No. 2 being the father of the petitioner No. 1 was also involved. The opposite party No. 2/de facto complainant mentioned again and again that she was subjected to such torture which seriously shattered her mental condition.

55. Mr. Moitra. as learned Counsel for the petitioners, categorically submitted that all such allegations were falsely cooked up in a way of counterblast as the de facto complainant received the notice of the matrimonial suit prior to initiation of the criminal proceeding. It cannot be denied that the matrimonial suit was filed prior to initiation of the criminal proceeding. But that by itself cannot conclusively suggest that it was an outer manifestation of an attitude of vengeance. There are instances when a married girl attempts to stretch her tolerance level as much as possible so as not to ruin her matrimonial life. It cannot always be said that whoever approaches the Court first, is better equipped with truth.



56. On a close scrutiny of the written complaint/FIR and other materials found out in course of investigation, this Court finds that there are prima facie materials so as to constitute an offence under Section 498A of I.P.C. against the petitioner No. 1 and the petitioner No. 2. But there is no such material so as to inspire confidence of the Court in order to justify implicating the petitioner No. 3 for the alleged offence under Section 498A of I.P.C.

57. It had been specifically claimed that the petitioner No. 1 approached the concerned authority and wanted to return the Stridhan properties of the O.P. No. 2. Certain letters have been referred to in this context. It is not desirable on the part of this Court to examine such letters and make an endeavour so as to find out the genuineness.

58. Admittedly, there had been recovery of certain Stridhan articles from the house of petitioner No. 2 as also from the possession of the petitioner No. 1. But, there is nothing worth mentioning so as to suggest that any such article belonging to O.P. No. 2 had been misappropriated. The offence under Section 405 of the Indian Penal Code which, in fact, defines "criminal breach of trust" appears to include any dishonest misappropriation by persons in whom confidence is placed as to the custody or application of particular property whether it be by legal authority or private contract or consent.

59. True, there may not be any need so as to establish that the entrustment must be express. An implied entrustment will suffice. But dishonest misappropriation or conversion to his own use or dishonest use or disposal of property is an essential ingredient so as to constitute an offence punishable under Section 406 of I.P.C.

60. Having regard to the facts and circumstances of the present case and the materials on record, this Court finds that there is no such material so as to justify continuation of the criminal proceeding for the offence under Section 406 of I.P.C. This aspect did not even find any significant space in the matrimonial suit.

61. In the absence of prima facie material, this Court also does not find any justification for proceeding against the petitioner No. 3 for the offence under Section 498A of I.P.C. The said petitioner No. 3, accordingly, may be discharged and may be released from her bail bond, if already on bail.

62. But, it cannot be said by any stretch of imagination that there is no material implicating the petitioner Nos. 1 and 2 for the offence under Section 498A of I.P.C. Thus, it cannot be said that continuation of the criminal proceeding against the petitioner No. 1 and the petitioner No. 2 for the offence under Section 498A of I.P.C. will amount to abuse of the process of Court.

63. The present application being C.R.R. 2591 of 2003 is, thus, disposed of with the following directions:

64. The criminal proceeding being C.R. Case No. 1463 of 2000 (charge sheet No. 22 dated 25-1-2002) be quashed as against the petitioner No. 3. The same stands quashed against the petitioner No. 1 and the petitioner No. 2 so far the offence under Section 406 of I.P.C. is concerned.

But, prayer for quashing of the said proceeding for the offence under Section 498A of I.P.C. against the petitioner Nos. 1 and 2 be dismissed.

65. The case-diary be returned through the learned Counsel for the O.P./State.

66. Send copy of this order to the learned Trial Court for information and necessary action.

67. Criminal department is directed to supply xerox certified copy of this order, if applied for, to the learned Counsel for both parties in compliance with due formalities as expeditiously as possible.