

Learned Judicial Magistrate, 2nd Court, Serampore, Hooghly arising out of Serampore Police Station Case No. 03 of 2022 under Section 498A/406/323/506/34 of the Indian Penal Code, 1960 and all subsequent orders passed by the Learned ACJM, Serampore .

Fact of the case

2. The Opposite Party no. 2 is the wife of petitioner no.1 and their marriage was solemnised on 25.12.2019 according to the provisions of Special Marriage Act, 1954 and the social marriage held on 26.2.2020 and since thereafter the parties were living at the house of father-in-law and blessed with a child born on 1.12.2020. A complaint was lodged by the Opposite Party No. 2 under section 156(3) of code of criminal procedure, 1970 against the present petitioners alleging of demand of dowry, physical and mental torture since after her marriage and also that petitioner no.1 is a patient of psychiatric and mentally unfit . It was alleged in the written complaint that after being severely assaulted she was driven away from the matrimonial house and went to Serampore Walsh Hospital for treatment. She went to lodge the complaint initially which was denied by the concerned police station and being dissatisfied she sent the complaint to the Superintendent of Police, Serampore Commissionerate, Hooghly and also the Sub-divisional police officer by speed post on 17.12.2021 and then after completing all the formalities lodged the complaint under Section 156 (3) of Cr.P.C before the learned ACJM, Serampore, Hooghly. In terms of order dated 27.12.20 2021 the learned ACJM registered a first information report under Section 498A/406/323/506/34 of

the Indian Penal Code and after completion of investigation the charge sheet has been submitted against the present petitioners.

3. The petitioner no.1 is the husband of the Opposite Party No. 2 and petitioner No. 2 and 3 are the parents-in-law who are permanently residing at a separate mess at Kolkata and aged about 71 years and 66 years respectively. It is the case of the petitioners that the opposite party No. 2 is a highly temperamental and hypersensitive to the ordinary course of human nature and picked up quarrel with the petitioner no. 1 without any rhyme and reason and often made false allegations against the petitioner no.1 to all his relatives, friends and even professional colleagues. It is the specific case of the petitioners that they have been falsely dragged into this complaint with concocted story and it is amply evident that it contains concocted, general and omnibus allegations without mentioning of any specific date of any incident as alleged. The petitioner no.1 has filed an application under section 25 of Guardian and wards Act, 1990 before the Learned District Judge, Hooghly being ACT VIII case no. 39 of 2022 praying for returning or providing custody of the minor child to the petitioner number 1. He also filed an application under section 12 of the Guardian and wards Act praying for an order of interim custody and visitation rights in respect of the minor son and on hearing the learned advocates by an order dated 5.7.20 22, the Learned District Judge allowed the said application with the observation that a father should not be devoid from visiting his own child as fatherly affection is necessary to boost up the mental faculties of the child. Accordingly direction was given to the opposite party No. 2/mother to bring a child in the Serampore court campus on every working Saturday that is on first and third Saturday at 3 PM and the father is directed

to meet his child for two hours. It is the specific case that the complaint has been filed without complying the required conditions and the learned Magistrate without applying judicial minds took cognizance of the charge sheet which is an outcome of a perfunctory investigation and hence liable to be quashed.

Submissions

4. The learned advocate representing the petitioner took the specific point of maintainability of the application filed under 156 (3) Cr.P.C filed in respect of any incident occurred to be alleged on 15.12.2021 with the affidavit filed on 24th December, 2021. In terms of Section 154(3) Cr.P.C the opposite party No. 2 has not furnished the required information when she approached before the concerned police station and hence was not to be treated as a FIR by the learned Magistrate. It is further submitted that the petitioner's claim of false implication of the petitioners get bolstered from the respective observation made by the learned court in the order passed in connection with the bail application as well as in the case filed by the petitioner for custody of the child. No specific role has been attributed against the present petitioners for which the allegations under section 498A/406/323 IPC can be attracted. The learned Advocate relied upon the decision reported in, **S.N Vijayalaxmi and others versus State of Karnataka and Anr.**¹ passed by the Hon'ble Supreme Court where further concluded that directions issued in the case of **Priyanka Srivastava & Anr vs State Of U.P.& Ors.**² are mandatory and guidelines issued in the case of **Priyanka Srivastava (Supra)** operate prospectively,

¹ INSC 2025 917

² (2015) 6 SCC 287

non-filing of the supportive affidavit is a curable defect, but must be cured before the Magistrate passes any substantive order on the complaint/application and if the Magistrate proceeds without the requisite affidavit, such order/any consequential order/proceedings can be quashed on the sole ground of non-compliance with **Priyanka Srivastava (supra)**.

5. The learned advocate on the other hand relied upon the decision of **Anurag Bhatnagar of another and another versus State (NCT of Delhi) & Anr.**³ **Radhye Sham Khemka & Anr. vs State of Bihar**⁴, **M/S Neharika Infrastructure Pvt Ltd vs State of Maharashtra**⁵. It is his contention as stated in the written notes of argument that the petitioner no.1 leads a life of drunkenness and debauchery and manner of uncertain temperament and he and his family members often abused extreme filthy and abusive language towards the opposite party No. 2 in public places and in their own house and finally she was driven out along with the baby on 16.12.2021 after assaulting her both mentally and physically on imputing un-chastity. It is further submitted that on completion of investigation the charge sheet has been submitted which prima facie establish the allegations levelled against them for which they should face the trial. It is further argued that the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegation made in the FIR in the complaint and quashing of a complaint should be an exception rather than an ordinary rule.
6. It is further argued that the it was held by Supreme Court that the High Court should not while exercising power under Section 482 of the code of criminal

³ 2025 INSC 895

⁴ (1993) 3 SCC 54

⁵ AIR 2021 SC 1918

procedure usurp the jurisdiction of the trial court and the power cannot be exercised to hold a parallel trial only on the basis of the statement and documents collected during investigation and enquiry for the purpose of expressing an opinion whether accused concerned is likely to be punished if the trial is allowed to proceed.

7. The learned prosecution would submit that there are sufficient materials found in course of investigation against the present petitioners for which they must face the trial in order to test the veracity of the allegations and accordingly prayed for dismissal of this Revisional Application. The Learned advocate produced the case diary before the court.

Analysis

8. Having heard the rival contentions as well as on perusal of materials on record it is found that the marriage between the petitioner no.1 and the opposite party No. 2 was initially solemnised under Special Marriage Act,1954 since they had a prior affair and subsequently social marriage held on 26.2.2020 and the child was born on 01.12.2020. The first-ever complaint can be found to be lodged by the Opposite Party No. 2 before the court of ACJM, Hooghly in the year 2021 alleging a specific incident occurred on 15.12.2021. The content of the written complaint discloses about their love affairs prior to their marriage and at the time of marriage as per demand of the accused persons the furniture, jewelleryes and utensils were given to the husband and in-laws but since after marriage all of them started physical and mental torture without providing food to her, without any treatment when she became pregnant and entire medical expenses where borne by her father under severe

pressure of the petitioner no.1. Despite that in order to save the matrimonial tie she continued to lead the conjugal life and gave birth to the male child on 1.12.20 20. Thereafter on 15.12.2021 her husband and parents-in-law physically assaulted and often abused her with filthy languages and locked them inside the room for the entire night tried to kill her by strangulation and in the morning she left the matrimonial house to her father's house which is only five minutes away from the matrimonial home but the petitioners trespassed into her father's house and assaulted her and abused her and also threatened her agent at the to kill. Since then she is residing at her father's house and then intimated the entire incident to Serampore Police Station but no action was taken and thereafter lodged the complaint under 156(3) of Cr.P.C.

9. Therefore it is evident from the nature of complaint that the argument made by the learned advocate on behalf of the Opposite Party No. 2 that after complying with all the formalities including intimating the superintendent of police by speed post and after no action was taken such complaint was lodged is found to be baseless. It is also contradicts the case of made out before this court that she was driven out from a matrimonial home when in the complaint she stated to have been escaped and the petitioners went to her father's house and then assaulted and threatened. Now the question boils of for consideration at the outset is the order passed by the learned Magistrate while sending the letter of complaint to the OC in charge of Serampore police Station in terms of the relevant provision was passed in accordance with law. In **Priyanka Srivastava versus State of U.P (supra)** mandated certain procedure before

invoking the provision of section 200 of Cr.P.C and with regard to compliance of Section 154(1) and (3) of Cr.P.C. The guidelines are that any person aggrieved by non-registration of an FIR by the police is required to approach the concerned Superintendent of Police and on his failure to take action, move before the Magistrate concerned under Section 200 of Cr.P.C, by filing a private complaint.

10. In the case of **S.N. Vijayalaxmi (supra)** the complainant took all such steps, registered FIR and when finally no action was done filed the requisite affidavit before the ACM M and during pendency of such private complaint the complainant approached the Deputy Commissioner of police, Bangalore city. On nothing being done even then, faced with such inaction the complainant finally filed the accused it affidavit before the ACJM who referred the PCR to the police culminating into the underlying FIR. The matter went up to the High Court for quashing and the view taken that it was a curable defect since before the referral order on the PCR by the ACMM for registering an FIR under section 156(3) of the CRPC, the required formalities were done. It was held by the Hon'ble Supreme Court that:-

*“this approach cannot be levelled erroneous. The requirement under **Priyanka Srivastava (supra)** is to safeguard the rights of the citizenry and to put a stop to unjust criminal action and filing of vexatious applications to settle personal scores. Thus, such requirement could not be said to be a mere formality”.*

It was specifically observed that:-

*“if after the filing of the complaint/application but before any order thereon is passed, such requirement is allowed to be fulfilled/complied with by the complainant, it would not, in our view, run counter to the law expounded in **Priyanka Srivastava (supra)**.”*

Accordingly, Hon’ble Apex Court concluded as follows-

*“i) directions issued in **Priyanka Srivastava (supra)** are mandatory;*

*ii) guidelines laid down in **Priyanka Srivastava (supra)** operate prospectively.*

iii) non-filing of the supporting affidavit is a curable defect, but must be cured before the magistrate passes any substantive order on the complaint/application, and

*iv) if the magistrate proceeds without the requisite affidavit, such order/any consequential orders/proceedings can be quashed on the sole ground of non-compliance with **Priyanka Srivastava (supra)** .”*

This judgement was delivered on 31st July 2025.

11. The decision relied upon by the learned advocate representing the opposite party No. 2 in **Anurag Bhatnagar (supra)** was delivered on 25.7.2025 and the point was discussed whether an application under Section 156(3) Cr.P.C could have been filed without approaching the police authorities where the informants neither approached the officer in charge of the police station nor the superintendent of police concerned but directly gone to the Magistrate, held that:-

“the Magistrate ought not to have ordinarily entertained the application under section 156(3) so as to direct the police for registration of the FIR, rather, it ought to have relegated the informant to first approach the officer in charge of the police station and then to the Superintendent of Police”.

However it was held that

“as entertaining an application directly by Magistrate is a mere procedural irregularity and since the Magistrate in a given circumstance is otherwise empowered to pass such an order, the action of the magistrate may not be illegal or without jurisdiction”.

The Hon'ble Supreme Court in this case further held that wherein the order of the Magistrate clearly states that 'Heard' the counsel or the application under section 156(3) Cr.P.C and had 'perused' the complaint which reveals commission of punishable offence and once and satisfaction has been recorded even if wrongly, it is not liable to be interfered while in exercise of inherent powers by the higher courts.

12. Therefore in the light of the above nature of observations made by the Hon'ble Supreme Court it is apparently clear in the present case where the Magistrate specifically mentioned in the order dated 27.12.2021 that the complaint was lodged previously before the Serampore police station and subsequently before the Chandannagore Police Commissionerate and such order was not challenged. This court being not acting as a Revisional or Appellate court is not required to test the legality of such order passed by the learned Magistrate and therefore when subsequently the investigation has

culminated into filing of the charge sheet it is to be seen whether by allowing the proceeding to be continued further it would be an abuse of the process of court or not. On close scrutiny of the entire contents of the written complaint it is apparent that no specific role has been attributed against the petitioner No. 2 & 3 who is the parents-in-law and resides in a separate mess. The allegations are primarily general and omnibus in nature without specifying any date or time or month excepting 15.12.2021. The injury report specifically discloses the name of the petitioner No.1 being the husband. In the decision as cited by the learned advocate of the Opposite Party No. 2 in **M/S Neeharika Infrastructure Pvt. Ltd. Versus State of Maharashtra and Others (supra)** the Hon'ble Supreme Court discussed the exercise of power by the High Court under Section 482 Cr.P.C and the parameters for exercise of such power and scope of use of such power. In this regard the case of **R.P. Kapur versus State of Punjab**⁶ was referred where it was held and observed that-

“the inherent powers of the High Court under Section 561 of the earlier Code cannot be exercised in regard to the matters specifically covered by the other provisions of the Code; the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice; ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. After observing this, thereafter

⁶ AIR 1960 SC 866

this Court then carved out some exceptions to the above-stated rule, which are as under:

“(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any

party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.””

In the decision **P.V Krishnabhat and Anr. Versus State of Karnataka and others**⁷, the Hon’ble Supreme Court held that:-

“criminal law should not be used as a tool for harassment or vendetta. The allegations in a criminal complaint must be scrutinised with care to ensure that it disclose a prima facie case before subjecting individuals to the rigour of criminal trial”.

13. In the present case the genesis of the complaint lies upon the matrimonial discord between the petitioner and the Opposite Party no 2. It is evident that in the written complaint no specific role has been attributed against any of the petitioner specially against the parents in law. It is therefore pertinent to see the observations made by the Hon’ble Supreme Court in a number of cases where casual reference to family members of husband in absence of specific allegation has been discouraged. In the decision of **Geeta Meherotra and Anr vs State of U.P**⁸ it was observed in hand that

“if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which

⁷ 2025 SCC On Line SC 484

⁸ (2012) 10 SCC 741

would persuade the court to take cognisance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law”.

Conclusion

- 14.** The present case considering the nature of allegations coupled with the managerial is collected in course of investigation and the injury report which manifest the name of the petitioner number one husband this court is of the view that there are no materials as alleged can constitute an offence under Section 498A IPC or 323 IPC against the present petitioner No. 2 & 3 against whom no specific role has been attributed in the entire content and therefore there is no reason to allow the proceedings to continue against them further. Accordingly the instant C.R.R 4013 of 2022 is allowed in part.
- 15.** The proceeding pending before the Learned Judicial Magistrate 2nd Court, Serampore being G.R. case no. 13 of 2022 is quashed qua the petitioner No. 2 and 3 and they are discharged from their respective bail bonds.
- 16.** So far the petitioner number 1 is concerned the Magistrate is directed to proceed with the matter in accordance with law.

17. Urgent certified copy to be provided if applied for after following all required formalities.

[CHAITALI CHATTERJEE (DAS), J.]

