

GAHC010039552021



2025:GAU-AS:11836

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./143/2021

MOIDUL ISLAM
S/O MD MOHIBUL HUSSAIN, R/O VILL-SORUMOTORIA, ANOWARA PATH,
HOUSE NO. 80, GUWAHATI-781006, DIST-KAMRUP(M), ASSAM
VERSUS
THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM
2:NASRIN SULTANA
D/O ZAKIR HUSSAIN
R/O FOUZDARIPATTY (KATHMILL)
P.O. AND P.S.-NAGAON
DIST-NAGAON
ASSAM
PIN-78200

Advocate for the Petitioner : MR. P KATAKI, MS. A AHMED,MR. JUNM LASKAR

Advocate for the Respondent : PP, ASSAM, MR H R A CHOUDHURY (R-2),MR. I A HAZARIKA (R-2),MR. H ALI (R-2),B BARMAN (R-2),MD F H LASKAR (R-2)

-BEFORE-

HON'BLE MR. JUSTICE ANJAN MONI KALITA

02.09.2025

ORDER (ORAL)

Heard Mr. M. P. Kataki, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned Addl. PP for the respondent-State and Mr. I.A.

Hazarika, learned counsel for respondent No. 2.

2. The instant application under Section 482 of the Cr.P.C., 1973 has been filed for quashing of PRC No. 175/2019 pending before the Court of learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati as well as the order dated 30.01.2019 taking cognizance of the matter by the aforesaid Chief Judicial Magistrate, Kamrup (Metro), Guwahati under Section 498 (A) IPC.

3. The facts, as narrated, are that the accused petitioner and the respondent No. 2 being in love relationship while staying together in Bengaluru, got married on 05.10.2017 and thereafter, they started to live in Bengaluru. After some time to their marriage, marital discord started to occur between the petitioner and the respondent No. 2 due to certain trivial matters. The respondent No. 2, after some time, left Bengaluru on her own will and denied to continue the conjugal life with the petitioner. Though the petitioner visited Guwahati to settle the matter amicably for restoration of their conjugal life but his efforts for doing so were failed. Without finding any option, the petitioner filed a petition before the Family Court at Guwahati for restoration of their conjugal life, vide F.C. (Civil) Case No. 287/2018 and accordingly, the learned Family Court issued summon to the respondent No. 2 for her appearance before the aforesaid Court. Thereafter, on receipt of the aforesaid Summon, the respondent No. 2 lodged an FIR against the petitioner and other family members before the Officer-in-Charge, Dispur Police Station. Accordingly, a case being Dispur P.S. Case No.1289/2018 was registered under Section 120 (B)/406/498(A)/34 IPC corresponding to G. R. Case No.3217/2018. Faced with the aforesaid G. R. Case, the petitioner preferred an Anticipatory Bail

Application before the Hon'ble Gauhati High Court and this Court was pleased to allow the petitioner to go on bail. After completion of the investigation, a Charge Sheet, vide Charge Sheet No.354/2018 dated 31.12.2018 was filed by the Investigating Officer. Thereafter, summon was issued to the petitioner by the Chief Judicial Magistrate which was never received by the petitioner. Subsequently, the respondent No. 2 filed another case against the petitioner before the Sub-Divisional Judicial Magistrate, Nagaon i.e. M.R. Case No. 94/2018 under Section 125 Cr.P.C. claiming maintenance from the petitioner which is still pending before the aforesaid Court. The respondent No. 2 filed another case against the petitioner and his family members before the Court of Sub-Divisional Judicial Magistrate, Nagaon which was registered as D. V. Case No.310/2018 under Section 12 of Protection of Women from Domestic Violence Act, 2005. It is stated that the petitioner was surprised when he found an order dated 03.12.2019, wherein, it was reflected that summon was served upon the accused petitioner, but in fact, the accused petitioner was at Bengaluru and he did not receive any summon and later on, he found that one Non-Bailable Warrant of Arrest (for short, 'NBWA') was issued against him. In fact, the petitioner found that, vide order dated 30.01.2019, the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati took cognizance of the offence under Section 498 (A) against the petitioner.

4. Being aggrieved by the aforesaid cognizance taken by the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati vide order dated 30.01.2019, the petitioner has filed the instant application before this Court for quashing of the aforesaid order as well as the proceeding

pending before the Court of learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati. As per the aforesaid FIR, dated 13.05.2018, filed by the respondent No. 2, it transpires that the respondent No. 2 alleged that the petitioner started to torture her mentally and physically from the very next date of their marriage. It was also alleged by the respondent No. 2 that the accused petitioner without any reason pulled her hair on 06.10.2017 and threatened her not to speak much or else he would give talaq to her. The respondent No. 2 further alleged that while visiting Sibsagar, the accused petitioner and she stayed in a Hotel in Jorhat on the way to Jorhat and on that night i.e. 11.10.2017, the accused petitioner abused her with filthy language without any reason. It was further alleged that while staying at Bengaluru from 17.10.2017 to 18.01.2018, the accused petitioner used to mentally harass her by scolding her in different ways and on one occasion, he tried to kill her by suffocating her with the help of a pillow. It was further alleged that when he came to Guwahati and went to stay in the house of in-laws, she could not stay there as both her in-laws were not present and therefore, she went to Nagaon i.e. her paternal home and on 24.02.2018, her father-in-law came to Nagaon and clearly stated that nobody would be coming to take her and if she wanted to come she had to come alone. In view of the aforesaid allegations, the respondent No. 2 prayed for necessary action against the accused person for harassing her mentally and physically.

5. Mr. P. Kataki, learned counsel for the petitioner submits that the FIR filed by the respondent No. 2 did not disclose any offence allegedly committed under Section 498 (A) of Cr.P.C. Therefore, he submits that the cognizance taken by the learned Chief Judicial Magistrate, Kamrup

(Metro), Guwahati is totally incorrect and hence, the said order of cognizance may be set aside and quashed. He submits that for bringing an offence under Section 498 (A) of IPC, the most important aspect of commission of cruelty against a person has to be present. He submits that a reading of the aforesaid FIR as well as the Charge Sheet does not disclose commission of any offence that may be charged under Section 498 (A) of IPC. He submits that though there were some issues between the petitioner and the respondent No. 2 and due to that certain cases have been filed by the parties against each other, there was no evidence of any cruelty committed by the petitioner. He submits that the FIR was lodged falsely by the respondent No. 2 as the same is apparent from the Charge Sheet filed in the case, wherein, the Investigating Officer had clearly mentioned that though the respondent No. 2 had filed the FIR against the In-laws of the respondent No. 2, both were discharged by the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati on the prayer of the Investigating Officer of the case. He submits that the allegations in the FIR against the petitioner are also false and there was no incident of cruelty was ever committed by the petitioner against the respondent No. 2.

6. To strengthen his argument regarding the wrong cognizance taken by the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati, the learned counsel for the petitioner cited the following judicial pronouncements of the Hon'ble Apex Court:-

(i) ***Sushi Kumar Sharma-vs-Union of India and Others***; reported in ***(2005) 6 SCC 281***;

(ii) ***Manju Ram Kalita-vs-State of Assam***; reported in

(2009) 13 SCC 330.

The learned counsel for the petitioner submits that the Explanation-B to Section 498 (A) is not applicable to the instant case as there is no allegation of any demand of dowry by the petitioner, either from the respondent No. 2 or from her family. He submits that the important ingredients of cruelty which is defined in Explanation-A of section 498 (A) IPC are totally missing in the instant case as could be seen from the allegations made in the aforesaid FIR. Referring to the aforesaid case of ***Sushi Kumar Sharma (supra)***, the learned counsel submits that for an offence of cruelty, the consequences have to be such that they 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 of the woman. The consequences are required to be established in order to bring home the application of section 498(A) IPC. To buttress his argument, he referred to the following paragraphs of ***Sushil Kumar Sharma (supra)***-

“9. Consequences of cruelty which 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 of the woman is required to be established in order to bring home the application of Section 498A IPC. Cruelty has been defined in the explanation for the purpose of Section 498A. It is to be noted that Sections 304-B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The explanation to Section 498A gives the meaning of ‘cruelty’. In Section 304-B there is no such explanation about the meaning of ‘cruelty’. But having regard to common background to these offences it has to be taken that the meaning of ‘cruelty’ or ‘harassment’ is the same as prescribed in the Explanation to Section 498A under which ‘cruelty’ by itself amounts to an offence”.

“10. The object for which Section 498A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting Criminal Law (Second Amendment) Act No. 46 of 1983. As clearly stated therein the increase in number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, which constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short 'the Cr.P.C.') and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-law and relatives. The avowed object is to combat the menace of dowry death and cruelty”.

“19. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bonafide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignomy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not an assassin's weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre-conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with

the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view”.

7. The learned counsel for the petitioner submits that as observed by the Hon’ble Apex Court, the object of section 498 (A) IPC is being misused in many cases and in the present case too, the same is misused to harass the petitioner. Therefore, he submits that the action of the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati in taking cognizance of the matter under Section 498 (A) in such a casual manner is not warranted. Referring to paragraph 14 of ***Monju Ram Kalita (supra)***, which is reproduced hereinbelow:-

“14. In the instant case, as the allegation of demand of dowry is not there, we are not concerned with clause (b) of the explanation. The elements of cruelty so far as clause (a) is concerned, have been classified as follows :

(i) any `wilful conduct which is of such a nature as is likely to drive the woman to commit suicide; or

(ii) any `wilful conduct which is likely to cause grave injury to the woman; or

(iii) any `wilful act which is likely to cause danger to life, limb or health, whether physical or mental of the woman”;

He submits that none of the aforesaid 3 (three) elements of cruelty is found in the aforesaid FIR lodged by the respondent No. 2.

8. In view of the aforesaid submissions, the learned counsel for the petitioner submits that this is a fit case wherein this Court by exercising the power under Section 482 Cr.P.C. may set aside and quash the impugned order whereby the cognizance under Section 498 (A) of IPC was taken by the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati.

9. On the other hand, Mr. I. A. Hazarika, learned counsel for the respondent No. 2 submits that the FIR as well as the Charge Sheet filed in the instant case clearly depicts the miserable story of the respondent No. 2. He submits that a plain reading of the aforesaid FIR reveals the kind of mental agony and harassment that the respondent No. 2 had gone through during her stay with the petitioner. He submits that to constitute cruelty, the incidents narrated in the FIR are sufficient. He further submits that the incidence of harassment were of continuous nature and not of a single or stand alone incident. The learned counsel fairly submits that though the allegation of dowry is not there but the incidences of harassment are palpably clear in the FIR. He further submits that this Court under the jurisdiction of Section 482 Cr.P.C. is not required to deal deep into the matter and this Court is required only to be *prima facie* satisfied about the presence of ingredients for the offence so alleged. He submits that this Court need not interfere in a matter where the FIR and the Charge Sheet clearly disclose *prima facie* offence under which the accused petitioner is charge sheeted.

10. In view of the aforesaid submissions, he prays that this Court may not entertain the instant petition and the same may be dismissed.

11. The learned Addl. PP submits that there are sufficient materials available against the accused petitioner and therefore, this Court may refrain itself from entertaining the instant petition.

12. This Court has heard the counsel for the respective parties at length.

13. This Court has carefully gone through the judicial pronouncements that have been cited by the learned counsel for the petitioner. It is discernable from a reading of the FIR that though on certain occasions, the petitioner might have harassed the respondent No. 2 during their quarrels, it is *prima facie* not found that any such incident occurred between them which would have led the respondent No. 2 to take any steps such as committing suicide. There is also no allegation in the FIR that the petitioner had ever caused any grave injury to the respondent No. 2 or had committed any action whereby there was danger to the life, limb or health of the respondent No. 2. Though, there was an allegation of killing the respondent No. 2 by the petitioner by suffocating her by pillow, that seems to be an incident of one of kind and not a regular or continuous nature. A bare perusal of Section 498 (A) IPC makes it clear that for committing cruelty under Section 498 (A) of IPC, the aforesaid pre-conditions and/ or ingredients have to be present in the actions of the accused person. This Court having perused the paragraphs quoted from the case of ***Sushi Kumar Sharma (supra)***, respectively agree that in many cases, section 498 (A) has been wrongly used against an accused person and thereby, causing several hardships to the accused person which is actually not permissible under law. This Court *prima facie* did not

find any material either from the FIR or from the Charge Sheet so as to show that the petitioner had committed any such harassment on the respondent No. 2 with a view to force her to commit suicide or to fulfill any illegal demands of him. There was also no material to show any continuous harassment, both physical and mental by the petitioner, whereby making her life miserable and force her to live separately from him. This Court also did not find any material *prima facie*, that due to any continuous harassment or cruelty committed on the respondent No. 2 by the petitioner which forced the respondent No. 2 to leave her husband's home at Bengaluru. In fact, what could be seen from the materials is that the respondent No. 2 left Bengaluru voluntarily to live with her parents. On the basis of the aforesaid materials available, this Court is of the considered opinion that no offence as alleged under Section 498 (A) IPC is discernable either from the FIR or from the Charge Sheet. Therefore, this Court does not find any cogent reason for the Chief Judicial Magistrate, Kamrup (Metro), Guwahati to take cognizance against the petitioner under Section 498 (A) of IPC.

14. In view of the aforesaid conclusion arrived at by this Court, the impugned order dated 30.01.2019 whereby the cognizance was taken by the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati is set aside and quashed.

15. Consequently, this Court quashes the case i.e. PRC 175/2019 pending before the Court of learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati. This Court also quashes and set aside the order dated

03.12.2019 as well as the order dated 16.12.2020 whereby summons and NBWA were issued against the petitioner.

In view of the aforesaid directions, the instant petition is disposed of as allowed.

JUDGE

Comparing Assistant