IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. No. 2178 of 2022

Mahinder Singh Sekhon

Versus

The State of West Bengal & Anr.

For the Petitioner	:	Mr. Sekhar Kumar Basu, Ld. Sr. Adv. Mr. Saubhik Mitter, Adv. Ms. Rajnandini Das, Adv. Mr. Karan Bapuli, Adv.
For the Opposite Party No. 2	:	Mr. Debabrata Acharyya, Adv. Mr. Sital Samanta, Adv.
For the State	:	Mr. Sagar Saha, Adv. Ms. Nayana Mukhopadhyay, Adv.
Heard on	:	29.09.2026
Judgment on	:	16.11.2026
Uploaded on	:	16.11.2026

Ajay Kumar Gupta, J.:-

1. By filing this Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 (In short, 'Cr.P.C.'), the petitioner

sought for quashing of the FIR being Ekbalpore P.S. Case No. 365/2020 dated 25.10.2020 under Sections 498A of the Indian Penal Code, 1860 (corresponding to C.G.R. Case No. 3450/2020) and all proceedings in connection thereof, now pending before the Court of the Learned Judicial Magistrate, 9th Court, Alipore, South 24 Parganas and the order dated 29.01.2022 passed by the Learned Chief Judicial Magistrate, Alipore, South 24 Parganas thereby taking cognizance of the offence as mentioned in the Charge Sheet No. 388/2021 dated 31.12.2021 under Section 498A of the IPC submitted against the petitioner in connection with the aforesaid case.

2. The background facts leading to the filing of the instant revisional application are that on 19.10.2020, when the Petitioner was about 69 years old, his wife/opposite party no. 2 herein lodged a written complaint alleging inter alia that on 03.01.1983 they got married at a Gurudwara in Behala, Kolkata and led their conjugal life. However, on 16.08.1987, nearly five years after their marriage, the opposite party no. 2 came to know that the petitioner had been deceiving her by concealing his extramarital affair with a woman named Rajinder Kaur from Ludhiana, Punjab. She further discovered that the two had an illegitimate son.

3. The opposite party no. 2 thereafter filed a suit being Title Suit No.237 of 1987 praying for declaration of her marriage null. On 29.06.1988, the Learned Assistant District Judge, 3rd Court, Alipore, South 24 Parganas, allowed her prayer and declared that no marriage had been solemnised between the petitioner and the opposite party no. 2 on 3.01.1983, and that there had never been any husband-wife relationship between the parties. It was further declared that the marriage certificate dated 03.01.1983, issued by the District Marriage Registrar, Alipore, 24-Parganas(s) under the provisions of the Hindu Marriage Act and subsequent amendments, is void.

4. Thereafter, the opposite party no. 2 went to Pune to pursue her education. In the meantime, the petitioner approached her parents, apologised several times, and also personally expressed his repentance to her. Having fallen ill with tuberculosis, he took shelter at her parents' house, seeking to rekindle their love and affection for him. The petitioner convinced the opposite party no. 2 that he had changed and further promised that he would not pursue any illicit relationship with anyone else. She believed him and resumed living with him again. On 02.06.1990, a son named Mahan Singh was born to them, and on 02.12.1992 they married once again. Subsequently, however, she learnt that on 11.06.1990, Rajinder Kaur had given birth to a second child on account of the Petitioner's continuing

relationship with her. On being confronted, the petitioner, who had claimed to have renounced all such relationships, denied any illicit relationship or illegitimate child and affirmed that he was leading an honest married life with the opposite party no. 2.

5. The parties continued to live together. On 18.01.1995, the opposite party No. 2 gave birth to their second son, named Nishan Singh Sekhon. In March, 1998, they purchased an apartment at Janaki Apartment, Block A, 60, Kavi Md. Iqbal Road, Kolkata 700023. Till 2015, they lived together peacefully, with barely any friction.

6. On 13.06.2014, the petitioner executed a General Power of Attorney in favour of the opposite party no. 2, empowering her to sell/transfer half of his property, which is situated at Mouza Argori, Police Station Sankrail, District Howrah. From 2015 onwards, however, his behaviour towards her and their sons changed abruptly.

7. The petitioner stopped caring for the opposite party no. 2 and their sons, spent no time with them, and became infuriated whenever they sought an explanation for his estrangement. In 2016, the opposite party no. 2 met with an accident, as a result of which her right hand got fractured, for which she had to undergo two major surgeries. At such trying times, the petitioner provided neither financial nor emotional support and remained absent. He began visiting Ludhiana, Punjab frequently on various pretexts.

8. In 2018, the opposite party no. 2 learnt that the petitioner had settled with Rajinder Kaur in Ludhiana, Punjab. She has implored the petitioner to come back to her, but he turned a blind eye and a deaf ear to her requests and needs. She then filed an application under section 9 of the Hindu Marriage Act, 1955 (being MAT Suit No. 3364 of 2018) before the Learned District Judge, Alipore, South 24 Parganas, seeking restitution of conjugal rights.

9. In the year 2019, she learnt that the petitioner had transferred all his immovable properties, including agricultural land in Dakha, Punjab and in Bhomaur, in favour of Rajinder Kaur, thereby depriving the opposite party no. 2 and their sons from enjoying his properties and cheating her over several years. The petitioner's case is that he is innocent and never neglected her and their sons; rather, he also transferred various properties in her name; therefore, he filed this application seeking relief as aforesaid. Hence, this application.

10. Mr. Basu, Sr. counsel appearing on behalf of the petitioner, vehemently argued and submitted that the opposite party no. 2 has falsely implicated the petitioner without disclosing the essential ingredients as required to establish an offence under Section 498A of the IPC; further, the allegations levelled against the present petitioner are mainly with regard to an extra-marital affair with another woman. It is an undisputed fact that he had an earlier wife. The marriage was

legal with a valid marriage certificate. Their marriage was prior to the marriage of the opposite party no. 2; two sons were born from the earlier marriage. The earlier marriage was performed on 09.04.1978, and the same was a registered marriage. He has two sons from his second wife, i.e., with the opposite No.2 herein. All were living peacefully for a long time, but suddenly, she started pressuring him to transfer all his properties in favour of the opposite party no. 2 and their two sons only, depriving others, and it was not acceptable to the petitioner.

11. It was further submitted that the opposite party is a very greedy lady and always pressurised the petitioner in different ways; it was/is not possible for him to accept her illegal demands and proposals. He never neglected them. He always took care even when he was in Africa, where he worked from 2014-2016. During that period, the petitioner used to transfer his income digitally to fund the education and maintenance of the sons. However, the opposite party no. 2 lodged a false and frivolous case 37 years after the initial marriage and 28 years after the subsequent marriage, only to harass the petitioner for illegal gain, even though both the petitioner and the opposite party no. 2 are now septuagenarian. The petitioner is suffering from various old age ailments, and now he cannot move here and there freely.

12. It was further contended that the petitioner purchased several properties in Kolkata and Punjab in the name of opposite party No.2, There is a joint ownership property in Howrah in joint names and Petitioner executed the general power of attorney in favour her to deal with his share in the property. The property was sold, but he did not receive any share from the proceeds of the sale of the said property. The allegation against the petitioner is only about an extra-marital relationship, although the said marriage was legal and valid and he has sons from earlier wedlock. The allegation of an extra-marital relationship with another woman is not considered to be an offence punishable under section 498A of the Indian Penal Code. To fortify his submission, the learned Sr. counsel has placed reliance on two decisions in the case of ***Pinakin Mahipatray Rawal v. State of Gujarat*** reported in ***(2013) 3 SCC (Cri) 801*** and ***Wasim v. State (NCT of Delhi)*** reported in ***(2019) 3 SCC (Cri) 69.***

13. It was further contended that during investigation, no substantial material was collected against the present petitioner to implicate him for an offence punishable under Section 498A of the IPC. In the absence of such substantial material, the de-facto complainant's accusations appear to be concocted, fabricated and made with mala fide intention only to harass the petitioners, though he is innocent. Therefore, allowing such proceeding to continue in the absence of any

substantial material against the present petitioner would amount to abuse of process of law and for securing the ends of justice, the proceeding may be quashed; otherwise, the petitioner would be highly prejudiced.

14. Learned counsel appearing on behalf of the opposite party no. 2 vehemently opposed the prayer for quashing of the proceeding and further submitted that the petitioner was torturing the opposite party no. 2 in different ways by suppressing his extra-marital relationship with another woman. The petitioner tortured her in different ways and neglected the opposite party no. 2 and their sons. She refrained from lodging any F.I.R. initially, in the hope that the situation would improve with the passage of time. Instead, it worsened when she raised the issue of his extramarital relationship, and she was compelled to lodge the complaint against the petitioner. Therefore, this case is required to be tried by the Learned Trial Court for proper adjudication and to punish him. Even after investigation, a prima facie case has been established against the present petitioner under Section 498A of the IPC, and when the evidence was collected during the investigation, this Court may not embark upon the materials without a full-fledged trial. Therefore, the Revisional application is liable to be dismissed.

15. Learned counsel appearing on behalf of the State produced the case diary and further concurred with the submission of the learned counsel appearing on behalf of the opposite party no. 2 and further submitted that the FIR disclosed the cognizable offence punishable under Section 498A of the IPC. Accordingly, an FIR was lodged and, subsequently, after investigation, statements of the witnesses were recorded under Section 161 of the Cr.P.C., and those statements establish a prima facie case under Section 498A of the IPC. Accordingly, the Revisional application is liable to be dismissed.

16. Having considered the arguments and submissions advanced by the learned counsels for the respective parties and having gone through the materials available in the case diary and documents annexed with the Revisional application, this Court finds that the principal allegation in the complaint is that the petitioner carried on an extra-marital relationship with another woman from the very inception of the marriage.

17. It further appears from the record that the petitioner was married to Rajinder Kaur prior to his second marriage and that he had 2 sons from that marriage. They reside in Punjab. The opposite party no. 2 herself admits that the petitioner resides in Punjab most of the time.

18. The marriage certificate available on record reveals that the date of the earlier marriage recorded is 09.04.1978, long before the first

marriage of the opposite party no. 2 with the petitioner. She married the petitioner again in 1992, despite knowing about his relationship with Rajinder Kaur.

19. It is an undisputed fact that the opposite party no. 2 obtained a decree from the civil court declaring her previous marriage with the petitioner void. Even with the knowledge of his previous marriage and relationship, the opposite party no. 2 married him a second time. She had filed another similar complaint before the Punjab police on similar facts, but the same could not be initiated after preliminary inquiry. She has restricted the allegations against the petitioner to the effect that he suppressed his illicit relationship with another woman and his properties have been transferred in her favour, albeit the previous marriage appears prima facie registered and has two sons. There is no specific allegation in the FIR regarding physical and mental torture but in statement recorded under section 161 of sons disclosed petitioner used to abuse and assault time to time. However, neither does the FIR disclose any cognizable offence nor a single instance of abuse or assault upon the opposite party no. 2, nor has the investigation yielded any material to corroborate such allegations.

20. From the perusal of the FIR and the statements recorded under Section 161 during investigation, it is revealed that the allegations are general, omnibus and lacking in particulars. No specific details

have been given with regard to the mode and manner of either mental or physical torture by the Petitioner. In such a situation, a person cannot be allowed to face the trial. The Hon'ble Supreme Court, time and again, reiterated that the proceedings against any accused should not be allowed to continue unless and until there is a specific allegation and/or ingredient of the offence fulfilled against the accused.

21. This Court is conscious of the settled legal position that the FIR is not expected to be an encyclopaedia which indicates every minute detail. However, during investigation, allegations should be corroborated by substantive materials. Upon perusal of the FIR, no specific role is attributed to the petitioner with regard to the allegations or incident of physical and mental cruelty. No date, time or manner of inflicting such torture has been mentioned. Mere lodging a criminal case against any person without particular allegation after 28 years of marriage does not constitute an offence punishable under Section 498A of the Indian Penal Code. So, it indicates that whatever allegations made in the FIR appear to be vague and omnibus, only to harass the petitioner for her illegal purpose or intention, which led to this Court the proceeding initiated against the present petitioner, who is now septuagenarian, is only for harassing him with an ulterior motive. Therefore, this Court holds that the continuation of the

criminal proceeding against the present petitioner would result in sheer abuse of process of law.

22. Upon perusal of the statements recorded under Section 161 of Cr.P.C., this Court finds that no specific allegations or role are mentioned by the witnesses against the petitioner. Both sons only made statements that their father sometimes abused their mother and assaulted time to time, but upon careful perusal of the written complaint, there is no such allegation levelled by the opposite party no.2 in a single word. 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/petitioner.

23. The Hon'ble Supreme Court has repeatedly held that proceedings against an accused should not continue in the absence of specific allegations against him. Where no specific role is attributed and no particulars are furnished, the proceeding deserves to be nipped in the bud, as its continuation would subject the accused to oppression and prejudice.

24. It would be apposite to refer to the decisions of the Hon'ble Supreme Court relied upon by the petitioner as aforesaid.

25. In ***Pinakin Mahipatray Rawal v. State of Gujarat (Supra)***, the husband had been convicted under Sections 498A and 306 of the IPC

after his wife committed suicide. The prosecution case rested entirely on his alleged extra-marital relationship with a colleague; there was no evidence of dowry demand or of physical or mental harassment on that account. In the said case, the Hon'ble Supreme Court noted that the term "extra-marital relationship" is not defined in the IPC. It held that merely the fact that a husband develops some intimacy with another person during the subsistence of the marriage, and fails to discharge his marital obligations, does not by itself amount to "cruelty". To fall within the Explanation to Section 498A, the conduct must be of such a nature as is likely to drive the spouse to commit suicide. The Court added that mental harassment, and not only physical assault, can constitute cruelty, and that mental cruelty varies from person to person according to the intensity and degree of endurance. On the facts, it found the relationship was not of such a nature, and that the prosecution had not discharged its burden of showing otherwise. The conviction was set aside.

26. In ***Wasim v. State (NCT of Delhi) (Supra)***, the husband was convicted under Section 498A of the IPC by the trial court for mental cruelty arising from an extra-marital relationship and threats to leave his wife. The trial court had found that the dowry demand was not proved, and the High Court acquitted him under Section 306 on the ground that neither mental nor physical cruelty was proved. The High

Court nevertheless sustained the Section 498A conviction on the basis of dowry demand, without examining the evidence or the trial court's findings on it. The Hon'ble Supreme Court held that cruelty under Section 498A is of two kinds: wilful conduct likely to drive the woman to suicide or to cause grave injury or danger to life, limb or health, or harassment connected with an unlawful demand for property. Since the High Court had categorically found that neither mental nor physical cruelty was proved, the conviction could not stand on the first limb. It also could not be sustained on dowry demand without a reasoned discussion of the evidence. The conviction was set aside.

27. The principle that emerges from these decisions is that an extra-marital relationship, without more, does not constitute cruelty under Section 498A of the IPC. The prosecution must establish, by evidence, wilful conduct falling within clause (a) or harassment falling within clause (b) of the Explanation. In the present case, the allegations in the FIR are confined to the petitioner's relationship with another woman and the transfer of properties to her. The allegations therefore do not bring the case within either limb of the explanation.

28. After careful scrutiny of the materials available in the case diary, this Court does not find any sufficient or cogent materials against the present petitioner. Even if, for the sake of argument, these

proceedings were to be continued, the conviction of petitioner appears bleak and remote. To secure the ends of justice, the proceedings are deserved to be quashed under the inherent power granted under Section 482 of the Cr.P.C. insofar as the petitioner is concerned.

29. In the light of the above facts and discussions of this Court and in view of observations made by the Hon'ble Supreme Court in the above cited judgment, this Court is fully satisfied that this case falls within Categories 1, 3, and 7 of the guidelines in ***State of Haryana v. Bhajan Lal***, reported in ***1992 Supp (1) SCC 33.***

30. Accordingly, **CRR No. 2178 of 2022** is, thus, **allowed**. Pending applications, if any, are also, thus, disposed of.

31. Consequently, FIR being Ekbalpore P.S. Case No. 365/2020 dated 25.10.2020 under Sections 498A of the Indian Penal Code, 1860 (corresponding to C.G.R. Case No. 3450/2020) and all proceedings in connection thereof, now pending before the Court of the Learned Judicial Magistrate, 9th Court, Alipore, South 24 Parganas and the order dated 29.01.2022 passed by the Learned Chief Judicial Magistrate, Alipore, South 24 Parganas thereby taking cognizance of the offence as mentioned in the Charge Sheet No. 388/2021 dated 31.12.2021 under Section 498A of the IPC are hereby quashed and set aside insofar as the present petitioner is concerned.

32. Let a copy of this Judgment be sent to the Learned Court below for information.

33. Interim order, if any, stands vacated.

34. Case diary be returned to the learned counsel for the state.

35. All parties will act on the server copies of this Judgment duly downloaded from the official *website* of this Hon'ble High Court.

36. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal and necessary formalities.

(Ajay Kumar Gupta, J.)

(P.A.)