

**Criminal Revision**

**Present: The Hon'ble Justice Ashim Kumar Roy**

**Judgment On : 23-03-2010**

**C.R.R. No. 4397 of 2009**

**Goutam Mondal & Ors.  
versus  
Dolon Mondal & Ors.**

**POINTS:**

Quashing of Criminal case----Pendency of matrimonial suit ----Presence of criminal elements in the petition of complaint-----Delay in lodging the complaint-----Quashing of criminal complaint ,if proper-----Indian Penal Code, Ss.406, 498A.

**FACTS:**

The present Criminal Revision Application has been filed by the husband and his relatives invoking Section 482 of the Code of Criminal Procedure, for quashing of a criminal case relating to an offence punishable under Sections 498A/406 of the Indian Penal Code, on the grounds of the pendency of matrimonial suit filed by the husband, that the complaint is a counterblast to the suit and the ground of delay.

**HELD:**

In the opinion of the Court , none of the grounds are tenable in law for quashing of a criminal complaint. At this stage, it is not permissible to enter into the question of truth or falsehood of the prosecution case. Similarly, the delay in lodging complaint is not per se illegal and being a pure question of fact can only be taken into consideration during the trial.

PARA--2

The allegations of demanding money and torture to the wife clearly attract the provisions of Section 498A of the Indian Penal Code. It cannot be said that no offence is made out. The truth or falsity of such allegations cannot be determined at this stage. The Court is not supposed to see while dealing with the question of quashing of a case which version of the case is true.

PARA---3

For Petitioners : Mr. Rwitendra Banerjee

**THE COURT:**

Invoking Section 482 of the Code of Criminal Procedure, the present petitioners, who are happened to be the husband and the relatives of the husband have approached this Court for quashing of a criminal case relating to an offence punishable under Sections 498A/406 of the Indian Penal Code, on the following grounds;

(a) Before lodging of the impugned complaint, the husband instituted a Matrimonial Suit for dissolution of marriage.

(b) The complaint is a counter blast to the Matrimonial Suit for divorce instituted by the husband.

(c) There has been a long delay in lodging the complaint.

(d) The Learned Magistrate mechanically directed issuance of process without holding any enquiry as to the truth of the allegation.

2. I have given my anxious and thoughtful consideration to the grounds on which the petitioners are seeking quashing of the impugned complaint. In my opinion, none of the grounds are tenable in law for quashing of a criminal complaint. At the stage when the Court is posed with a question for quashing of a complaint, it is not permissible to enter into the question of truth or falsehood of the prosecution case. Whether such allegations have been made motivatedly and mala fide is purely a question of trial. The contention of the petitioner that a divorce suit is pending that cannot be the ground for quashing of a criminal complaint. Similarly, the delay in lodging complaint is not per se illegal and being a pure question of fact can only be taken into consideration during the trial.

3. In this case, having gone through the petition of complaint, I find that there is specific allegation that after marriage and after the complainant gave birth to a child, the present petitioners asked her to bring Rs. 2 lakhs from her parents and as the parents of the petitioner could not fulfil their such demand, she was subjected to torture. According to the provision of Section 498A of the Indian Penal Code, this allegation clearly attracts the proviso to Section 498A of the Indian Penal Code. Therefore, it cannot be said, no offence has been made out. It is the further allegation that at the time of the marriage whatever articles were given to the defacto-complainant, which are her exclusive stridhan properties, have also not been returned to her when she was driven out from her matrimonial home and have been mis-appropriated by the accused persons, this also clearly makes out an offence punishable under Section 406 of the Indian Penal Code. The truth or falsity of such allegation cannot be determined at this stage. The Court is not supposed to see when dealing with the matter for quashing, which version of the case is true, whether the version of the complainant or that of the accused persons.

4. This criminal revision has no merit and, accordingly, stands dismissed. Interim order, if any, stands vacated.

5. However, it is lastly submitted by the learned advocate of the petitioners' that the petitioner nos. 2, 3 and 4 are very old man. The petitioner no. 2 is aged about 87 years and others are nearly 70 years and it is further submitted that they are suffering various old aged diseases, therefore, it causes enormous hardship to them in appearing in the Court during the day-to-day proceedings of the case.

6. In such view of the matter, the petitioners shall have the liberty to file an application under Section 205 of the Code of Criminal Procedure, seeking exemption from their personal appearance in Court.

If any such application is moved on their behalf, the Learned Magistrate shall consider the same sympathetically in accordance with law.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

**( Ashim Kumar Roy, J. )**