

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.15195 of 2015**

Arising Out of Case No.-1288 Year-2004 Thana- MUZFFARPUR COMPLAINT CASE  
District- Muzaffarpur

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Sushila Devi W/o Late Ramadhar Singh Resident of Village Agrehan, P.S.  
Bariyapur, District Munger.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sarita Kumari D/o Satya Narayan Prasad Resident of Mohalla Chak Basu  
Rambagh, P.S. Mithanpure, District- Muzaffarpur.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Sanjay Kumar Ojha, Advocate  
For the State : Mr. Jharkhandi Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**  
**ORAL JUDGMENT**

**Date : 13-05-2019**

Heard learned counsel for the petitioner and learned APP  
for the State.

2. The petitioner has moved the Court under Section 482  
of the Code of Criminal Procedure, 1973 (hereinafter referred to as  
'Code') for the following relief:

*“That the instant application is being filed for  
quashing the order dated 29.09.2004 order taking  
cognizance passed in complaint case no. 1288 of 2004  
and passed by learned Sub-Divisional Judicial  
Magistrate, East Muzaffarpur whereby and where  
under cognizance has been taken for offences under  
sections 323, 498A of the India Penal Code and 3/4 of  
Dowry Prohibition Act against the petitioner on the  
basis of a complaint lodged by the opposite party No-  
2.”*



3. The allegation against the petitioner and eight others is of torture, assault and demand of dowry and also conspiracy to kill the opposite party no. 2-complainant.

4. Learned counsel for the petitioner submitted that she is the mother of the husband of the opposite party no. 2. It was submitted that the opposite party no. 2 herself did not reside in the matrimonial home and the allegations made are totally incorrect. Learned counsel further submitted that the opposite party no. 2 herself had filed Matrimonial Case No. 370 of 2010 against the son of the petitioner, who is the husband of the opposite party no. 2, seeking divorce and by order dated 04.11.2011, the same has been allowed. Learned counsel submitted that once the marriage is dissolved, there is no occasion for any prosecution for demand of dowry.

5. Learned APP submitted that the complaint case was filed in the year 2004 whereas the matrimonial case was filed by the opposite party no. 2 in the year 2010 and the judgment came on 04.11.2011. It was submitted that thus, in the year 2004 when the complaint case was filed, the opposite party no. 2 was very much the daughter-in-law of the petitioner and she having faced assault, torture and demand of dowry, the petitioner deserves to be punished. It was further submitted that the order of cognizance



challenged in the present application is dated 29.09.2004, whereas the application has been filed in the year 2015, i.e., after more than ten and a half years, which itself renders the same unfit for consideration.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application.

7. As has rightly been submitted by learned APP, the complaint case is of the year 2004 and the order of cognizance also of the same year and, thus, the present application challenging such cognizance order filed in the year 2015, is clearly not fit to be entertained on the ground of gross delay and laches. Further, the main ground taken by learned counsel for the petitioner that there is already a divorce between her son and the opposite party no. 2, is of no consequence, as the matrimonial case itself was filed in the year 2010 and, that too, by the opposite party no. 2 and the judgment came on 04.11.2011. Moreover, filing of a divorce case by the opposite party no. 2, who is the wife, itself is proof of the fact that she was tortured in the matrimonial home. The same having been accepted and upheld by the Court while granting divorce to the opposite party no. 2 also indicates that the allegation made in the complaint filed by the opposite party no. 2 is correct.



Thus, in the aforesaid background, it cannot be said that the order taking cognizance suffers from any legal or factual infirmity. Obviously, the parties shall have full opportunity to prove their case during trial but, at the present stage, such order taking cognizance, in the considered opinion of the Court, does not warrant any interference by the Court in exercise of its inherent power under Section 482 of the Code.

8. For reasons aforesaid, the application stands dismissed.

**(Ahsanuddin Amanullah, J)**

Anjani/-

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