

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1443 of 2017

Arising Out of PS. Case No.-2657 Year-2015 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

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1. Niraj Shahi @ Niraj Kumar Shahi Son of Shashikant Shahi,
 2. Shashikant Shahi, Son of Late Suresh Shahi,
 3. Mira Shahi, Wife of Shashikant Shahi,
 4. Pankaj Shahi @ Pankaj Kumar Shahi, Son of Shashikant Shahi,
 5. Suman Shahi, Wife of Pankaj Shahi, All resident of Village- Tirmahuan, P.S.- Turkapatti, District- Kushinagar, U. Pat Present 06/1021 Jankipuram Bistar, P.S.- Madiyahu, District- Lucknow U.P.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Pragati Shahi, Wife of Niraj Shahi, D/o Markandey Rai, Resident of Village- Gopalpur, Parsauni, P.S.- Gopalpur, District- Gopalganj.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Adv. Mr. Santosh Kumar Pandey, Adv. Mr. Rakesh Kumar Sharma Adv.
For the Opposite Party/s	:	Mr. Pankaj Kumar, Adv. Mr. Subhesh Pandey, Adv.
For the State	:	Mr. Bal Mukund Prasad Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

- 8 18-04-2019 **1.** Asking for quashing of the order dated 07.10.2015 passed by Sri Harsbardhan, Judicial Magistrate, Ist Class, Gopalganj, in Complaint Case No.2657/2015 whereby and whereunder petitioners have been summoned to face trial for an offence punishable under Section 498A of the IPC and ³/₄ D.P. Act, instant petition has been filed.
- 2.** Opposite Party No.2 filed complaint petition alleging inter alia that after having been married with Niraj



Shahi on 12.12.2009, she come to her Sasural. During stay, her husband, father-in-law, mother-in-law, brother-in-law and sister-in-law began to taunt her inflicting mental cruelty calling daughter of a wretched person as, though at the time of marriage her father had given sumptuous articles, cash (so detailed) but could not afford to give four wheeler as well as automatic generator. When the activity of the accused persons became unbearable, she informed her Naihar whereupon, her father came and said that he is already under debt so, is unable to fulfill their demand whereupon, he was disrespected. In the aforesaid background, the accused persons began to exert physical torture upon her. During midst thereof, she had begotten a female child on 20.11.2010. Even then, the accused persons continued with their nefarious activities. Lastly, in the year 2012 the accused persons, after brutally assaulting her, deserted by dumping at her Naihar. Her father and other family members took initiative whereupon, she was taken a back after six months but, again subjected her with the same treatment followed with her deportation from her Sasural. During her stay at her Naihar, her father against took initiative by having presence of respectable persons, relatives who convened panchayati and lastly, in the month of January, 2015 anyhow she



was taken away. However, during her stay the accused persons did not desist themselves from torturous act extorting physical as well as mental cruelty upon her. Lastly, in the night of 29.08.2015 her husband, father-in-law and mother-in-law, in-law Pankaj Shani and Suman armed with 'Dab' forcibly entered inside her room and then, Meera sprinkle K.Oil over her. Perceiving the subsequent event, she raised alarm attracting the neighbour whereupon, her life was saved. On the following days she along with her daughter has been kicked out from her Sasural after snatching of all their belongings, Stridhan. Her father, even thereafter tried to materialize the situation but, the accused persons flatly refused to accept till fulfillment of their demands.

3. On the aforesaid complaint, the learned lower court proceeded with an inquiry under Section 202 of the Cr.P.C. and after completing the same, by the order impugned took cognizance of an offence punishable under Section 498A IPC, $\frac{3}{4}$ of the Dowry Prohibition Act, the subject matter of instant petition.

4. Three folds argument has been raised on behalf of petitioners. First and foremost happens to be that because of the fact that instant prosecution happens to be false



and frivolous, on account thereof, no place of occurrence has been shown. In order to justify the same, it has also been submitted that the house of the petitioners lies at village-Tirmahun while the husband petitioner no.1, being employed in a Co-operative Bank, is residing at Lucknow (Flat No.6/104 Jankipuram Extension, P.S.-Madiyahu, Lucknow) and before that was posted at Mathura. That being so, it suffers from jurisdictional error. Moreover, it is an admitted fact that during course of stay at her Sasural she had faced the consequence whereupon, the jurisdiction of the Gopalganj was not at all legally acknowledgeable. That being so, the learned lower court should have returned the complaint petition directing to prefer before the court having the jurisdiction in accordance with section 201 Cr.P.C. or would have taken recourse so prescribed under Section 187 Cr.P.C.

5. Then, it has been submitted that consistently, it has been held that on account of bitterness in the marital life, there happens to be incredible increase in filing of the cases but manner whereunder it is being presented arraying the agnates as an accused, making bald statement virtually hackneyed, the very purpose of introduction of 498A of the IPC, and that happens to be reason behind that in large number of cases including **Sushil**



Kumar Sharma vs. Union of India & Ors. reported in (2005) 6 SCC 281, Preeti Gupta & Anr. vs. State of Jharkhand & Anr. reported in (2010) 7 SCC 667, Ramgopal & Anr. vs. State of Madhya Pradesh & Anr. reported in (2010) 13 SCC 540, K. Subba Rao & Ors. vs. State of Telangana & Ors. reported in (2018) 14 SCC 452, whenever there happens to be bald allegation suffering from deflagration the order of cognizance relating to the other family members, distant relatives has to be quashed. From perusal of the complaint petition, it is evident that the allegation suffers from vagueness and so, fell within one of the criterion having been laid down by the Apex Court, hence fit to be quashed.

6. It has also been submitted that present petition happens to be malicious as well as in order to counter-meet the allegation having under the divorce petition at the end of the husband (Annexure-2) bearing Matrimonial Suit No.2146/2015. So, on the cumulative consideration of all the eventualities, it is evident that the order impugned happens to be within the parameter of the principle laid down by the Apex Court whereupon, is fit to be set aside.

7. The learned counsel for the O.P. No.2 as well as learned APP vehemently controverted the submissions



having made on behalf of petitioners and submitted that order of cognizance unless and until is found soaked with impropriety, in contravention of settled principle of law, then and then, only could be interfered with. It has further been submitted that for the purpose of taking of cognizance, the court has to see presence of prima-facie case only and that has been found whereupon, petitioners have been summoned to face trial. Apart from this, it has also been submitted that the occurrence is not of one day affair rather it continued for years together not only for procurement of dowry rather so many factors were responsible influencing the husband as well as his family members, whereunder managed the things shrewdly, intelligently clutching slowly and lastly ousted as fault to satisfy greed so demanded. As such, it happens to be continuing affair which cannot be circumvent by single illustration, and so, it looks unwise, unprudent, improbable to detail the each day affair which the O.P. No.2 faced at her Sasural during course of her stay. During course of submission, it has also been urged that after going through the relevant judgment so cited at the end of petitioners , it is crystal clear that aforesaid aspect has not been properly considered by the Apex Court. That being so, there is factual variance, hence are not attracted. It has also been argued that



while deciding the aforesaid cases, the Apex Court did not considered applicability of the 34 or 149 IPC, 107 IPC, 120B IPC, inconsonance with the allegation. Furthermore, it has also been submitted that filing of divorce case when the O.P. No.2 is a mother of a daughter is another instance of mental cruelty depicting the unwarranted activity as well as dubious character of the petitioners as daughter is representative of a family which has been filed only to cloud their misdeeds.

8. Recently in **Rupali Devi vs. State of Uttar Pradesh & Ors. (Cr. Appeal No.71 of 2012)** order dated **09.04.2019** the three judges bench of the Apex Court observed that the complaint at the instance of wife is maintainable at a place of her residence away from her matrimonial house as, her residence happens to be on account of resultant of the cruelty having extorted over her during course of her stay at her Sasural depriving her to stay at the place where she could be, whereupon the whole event has been properly identified under the garb of Section 179 Cr.P.C.

9. In **Rakhi Mishra vs. State of Bihar & Ors.** reported in **(2017) 16 SCC 772**, it has been held:-

“4. We have heard learned counsel appearing for the parties. We are of the considered opinion that the High Court erred in allowing the application filed by Respondent Nos.2, 4, 5, 6, 7, 8, 9 and 10 and quashing the criminal



proceedings against them. A perusal of the FIR would clearly show that the Appellant alleged cruelty against Respondent Nos.2, 4, 5, 6, 7, 8, 9 and 10. This Court in [Sonu Gupta v. Deepak Gupta and Ors.](#) (2015) 3 SCC 424, 426 held as follows:

“8. ...At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence to find out whether a prima facie case is made out for summoning the accused persons. At this stage, the Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials would lead to conviction or not.”

5. The order passed by the Trial Court taking cognizance against R-2 and R-4 to R-9 is in conformity with the law laid down in the above judgment. It is settled law that the power under [Section 482](#) Cr. P.C. is exercised by the High Court only in exceptional circumstances only when a prima facie case is not made out against the accused. The test applied by this Court for interference at the initial stage of a prosecution is whether the uncontroverted allegations prima facie establish a case.”

10. In Taramani Parakh vs. State of M.P.

reported in **2015 Cr.L.J. 2031**, it has been held:

“14. From reading of the complaint, it cannot be held that even if the allegations are taken as proved no case is made out.

15. There are allegations against Respondent No.2 and his parents for harassing the complainant which forced her to leave the matrimonial home. Even now she continues to be separated from the matrimonial home as she apprehends lack of security and safety and proper environment in the matrimonial home. The question whether the appellant



has infact been harassed and treated with cruelty is a matter of trial but at this stage, it cannot be said that no case is made out. Thus, quashing of proceedings before the trial is not permissible.

16. The decisions referred to in the judgment of the High Court are distinguishable. In Neelu Chopra, parents of the husband were too old. The husband Rajesh had died and main allegations were only against him. This Court found no cogent material against other accused. In Manoj Mahavir, the appellant before this Court was the brother of the daughter-in- law of the accused who lodged the case against the accused for theft of jewellery during pendency of earlier 498A case. This Court found the said case to be absurd. In Geeta Mehrotra, case was against brother and sister of the husband. Divorce had taken place between the parties. The said cases neither purport to nor can be read as laying down any inflexible rule beyond the principles of quashing which have been mentioned above and applied to the facts of the cases therein which are distinguishable. In the present case the factual matrix is different from the said cases. Applying the settled principles, it cannot be held that there is no triable case against the accused.”

11. In Kailash Chandra Agrawal & Anr. vs.

State of U.P. & Others reported in **2014 AIR SCW 6152**, it has been held:

“9. We have gone through the FIR and the criminal complaint. In the FIR, the appellants have not been named and in the criminal complaint they have been named without attributing any specific role to them. The relationship of the appellants with the husband of the complainant is distant. In Kans Raj vs. State of Punjab & Ors.[(2000) 5 SCC 207], it was observed:-

“5.....A tendency has, however, developed for roping in all relations of the in-laws of the



deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case.” The Court has, thus, to be careful in summoning distant relatives without there being specific material. Only the husband, his parents or at best close family members may be expected to demand dowry or to harass the wife but not distant relations, unless there is tangible material to support allegations made against such distant relations. Mere naming of distant relations is not enough to summon them in absence of any specific role and material to support such role.

10. The parameters for quashing proceedings in a criminal complaint are well known. If there are triable issues, the Court is not expected to go into the veracity of the rival versions but where on the face of it, the criminal proceedings are abuse of Court’s process, quashing jurisdiction can be exercised. Reference may be made to [K. Ramakrishna and Ors. vs. State of Bihar](#) and Anr. [(2000) 8 SCC 547], [Pepsi Foods Ltd. and Anr. vs. Special Judicial Magistrate](#) and Ors. [(1998) 5 SCC 749], [State of Haryana and Ors. vs. Ch. Bhajan Lal](#) and Ors. [(1992) Suppl 1 SCC 335] and [Asmathunnisa vs. State of A.P.](#) represented by the Public Prosecutor,



High Court of A.P., Hyderabad and Anr.
[(2011) 11 SCC 259].”

12. The learned counsel for the O.P. No.2 has rightly argued that event of torture could not be one time affair, rather it varies, in some cases continues for years together yielding unfavourable scenario to the newly wedded girl, who, on account of custom, precedent, bound to stay at her Sasural, having complete separation from her birth place, expecting due recognition as one of the family member, to be responsible for procreation, expected to discharge her matrimonial obligation and vice versa. In the aforesaid background, the victim waits till her last, expecting change of situation and after perceiving no hope now remains, then, she has to come in fray in order to save her survival. In such situation one has to perceive such horrifying situation. Furthermore, in none of the judgment the facts has been properly adjudged taking into account implication of Section 34 IPC, 149 IPC, 107 IPC to onwards, dealing abater, conspirator. Moreover, really it happens to be plausible or possible to incorporate each day incident. Much less when the finding of the Apex Court in **Rupali Devi vs. State of Uttar Pradesh & Ors. (Cr. Appeal No.71 of 2012) order dated 09.04.2019** is considered in its true sense, the basic feature so coming out therefrom while allowing prosecution under the garb



of section 179 of the Cr.P.C., expands the arena whereupon, narrow construction is found still life. For better appreciation the relevant paras are quoted below:

“12. Section 498A of the Indian Penal Code was introduced by the Criminal Law (second amendment) Act, 1983. In addition to the aforesaid amendment in the Indian Penal Code, the provisions of Sections 174 and 176 of the Code of Criminal Procedure, 1973 relating to inquiries by police in case of death by suicides and inquiries by magistrates into cause of such deaths were also amended. Section 198A was also inserted in the Code of Criminal Procedure with regard to prosecution of offences under Section 498A. Further by an amendment in the first schedule to the Cr.PC the offence under Section 498A was made cognizable and non-bailable. of considerable significance is the introduction of Section 113A in the Indian Evidence Act by the Criminal Law (second amendment) Act, 1983 providing for presumption as to abetment of suicide by a married woman to be drawn if such suicide had been committed within a period of seven years from the date of marriage of the married woman and she had been subjected to cruelty. Section 113A is in the following term:

“113-A. Presumption as to abetment of suicide by a married woman.- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.- For the purposes of this section, “cruelty” shall have the same meaning as in section 498-A of the Indian Penal Code (45 of 1860).”

13. The object behind the aforesaid amendment, undoubtedly, was to combat the increasing cases of cruelty by the husband and the relatives of the



husband on the wife which leads to commission of suicides or grave injury to the wife besides seeking to deal with harassment of the wife so as to coerce her or any person related to her to meet any unlawful demand for any property, etc. The above stated object of the amendment cannot be overlooked while answering the question arising in the present case. The 8 judicial endeavour must, therefore, always be to make the provision of the laws introduced and inserted by the Criminal Laws (second amendment) Act, 1983 more efficacious and effective in view of the clear purpose behind the introduction of the provisions in question, as already noticed.

14. "Cruelty" which is the crux of the offence under Section 498A IPC is defined in Black's Law Dictionary to mean "The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage (Abuse, inhuman treatment, indignity)". Cruelty can be both physical or mental cruelty. The impact on the mental health of the wife by overt acts on the part of the husband or his relatives; the mental stress and trauma of being driven away from the matrimonial home and her helplessness to go back to the same home for fear of being illtreated are aspects that cannot be ignored while understanding the meaning of the expression "cruelty" appearing in Section 498A of the Indian Penal Code. The emotional distress or psychological effect on the wife, if not the physical injury, is bound to continue to traumatize the wife even after she leaves the matrimonial home and takes shelter at the parental home. Even if the acts of physical cruelty committed in the matrimonial house may have ceased and such acts do not occur at the parental home, there can be no doubt that the mental trauma and the psychological distress cause by the acts of the husband including verbal exchanges, if any, that had compelled the wife to leave the matrimonial home and take shelter with her parents would continue to persist at the parental home. Mental cruelty borne out of physical cruelty or abusive and humiliating verbal exchanges would continue in the parental home even though there may not be any overt act of physical cruelty at such place."

13. After perceiving the entire gamut of the litigation, it is evident that the prosecution of petitioner no.4



namely Pankaj Shahi @ Pankaj Kumar Shahi and petitioner no.5 Suman Shahi are not at all warranted whereupon, the order impugned to their interest is hereby quashed. Consequent thereupon, instant petition relating thereto is allowed. Contrary to it, prima facie allegation is found against remaining three namely Niraj Shahi @ Niraj Kumar Shahi, Shashikant Shahi and Mira Shahi, whereupon this petition lacks merit to their status consequent thereupon, is dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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