

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.81040 of 2019**

Arising Out of PS. Case No.-1127 Year-2017 Thana- BHABHU(KAIMUR) COMPLAIN C
District- Kaimur (Bhabua)

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KUMARI GUNJAN W/o Rajesh Singh @ Rajesh Kumar Singh Resident of
Village - Sasana, P. O.- Dangari, P.S.- Kudra, Distt.- Kaimur (Bhabua).

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR Bihar
2. Arjoon Singh Son of Late Bal Kishun Singh Resident of Village - Tajpur Kurrah, P.s.- Dildar nagar, Distt. - Gazipur (U.P.).

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Tiwary

For the Opposite Party/s : Mr.Md. Aslam Ansari

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**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
C.A.V. ORDER**

3 20-12-2019 This application has been filed for quashing the order dated 20.09.2019 passed in Criminal Revision No. 70 of 2019 passed by the learned Additional Sessions Judge –VIII, Kaimur at Bhabhua, allowing the Criminal Revision application filed by the opposite party no. 2 against the order dated 15.03.2019 passed by learned Judicial Magistrate -1st Class, by which, the discharge petition filed by the opposite party no. 2 was dismissed.

2. Brief facts of the case is that the petitioner filed a complaint case before the Chief Judicial Magistrate, Kaimur at Bhabhua stating there she was married with Rajesh Kumar Singh in the year 2015 according to Hindu rites and customs.



At the time of marriage, father of the petitioner gave cash of Rs. 2,00,000/- and ornament worth Rs. 1,50,000/- and at the time of tilak ceremony also cash of Rs.5,00,000/- and articles worth Rs. 2,00,000/- were also given and the opposite party no. 2, who is karta of the family of Rajesh Kumar Singh, has received the money and all the articles, as father of Rajesh Kumar Singh had died prior to the marriage. It is also alleged that after marriage accused persons started pressuring her to get the land of his father registered in the name of Rajesh Kumar Singh (husband) as she has no brother and for that she was tortured. She informed about the same to her father, who tried to solve the matter but the accused persons including opposite party no. 2 tortured and lastly drove her out of the house after snatching ornaments worth Rs.5,00,000/-.

3. After enquiry, finding a prima facie case against opposite party no. 2 and other accused persons processes were issued. It further appears that, after evidence before charge, a petition was filed by opposite party no. 2 before the learned Judicial Magistrate under Section 245 Cr.P.C. for his discharge, which was rejected by the learned Judicial Magistrate vide order dated 15.03.2019 passed in T.R. No. 28/18. Against which, opposite party no. 2 preferred a revision application before the



learned Sessions Judge, Kaimur and the learned Additional Sessions Judge –VIII, Kaimur at Bhabhua after hearing the parties, allowed the Criminal Revision filed by the petitioner vide order dated 20.09.2019 and the order dated 15.03.2019 passed by the learned Judicial Magistrate in Complaint Case No. 1127/2017 was set aside.

4. Being aggrieved by the same, petitioner has preferred the present application.

5. Submission of learned counsel for the petitioner is that learned Revisional Court has not appreciated the evidence available on record, which are sufficient for framing of charge against opposite party no. 2 as materials available on record shows that he is the Karta of the family and he along with other accused persons have demanded to transfer the land of father of complainant - petitioner and for non fulfilment of the said demand, the complainant -petitioner was subjected to torture and was driven out of the house and the witnesses have also supported the allegation before the charge. It has also been submitted that at the time of framing of charge, the Trial Court has only to see the prima facie evidence against the accused person and accordingly, the Trial Court i.e. Judicial Magistrate, finding prima facie evidence against him disallowed the



petition filed by opposite party no. 2 for his discharge but the revisional court without appreciating the same, has allowed the revision application filed by opposite party no. 2.

6. Heard learned A.P.P also.

7. From perusal of the impugned order as well as complaint petition and other materials available on record, it appears that opposite party no. 2 is the cousin father in law of the petitioner – complainant and though it is alleged that he is Karta of the family and there is allegation of demand of execution of sale deed of the father of complainant – petitioner in the name of husband of the complainant – petitioner and for that the complainant – petitioner was subjected to cruelty by all accused persons but it appears that no specific allegation has been attributed to opposite party no. 2, either of demand of subjecting the complainant – petitioner to cruelty. The revisional court considering the fact that there was demand of execution of sale deed and the beneficiary was non other than the husband of complainant – petitioner and not the opposite party no. 2, who is residing separately, whereas, the husband of petitioner – complainant is working as a constable in the police department and he has filed a divorce case also, allowed the revision application filed by opposite party no. 2 and set aside the order



dated 15.03.2019 passed by learned Judicial Magistrate -1st Class rejecting his prayer for discharge.

8. This court is well aware of the fact that the present case arises out of matrimonial discord between the parties and in such type of cases, there is tendency to implicate the entire family members of the husband only on the basis of general and omnibus allegation, which lead to situation when there is no hope left for any settlement between the parties. The aforesaid aspect of the matter has been considered by the Hon'ble Apex Court in several judgments including the judgment in the case of **Preeti Gupta & Anr vs State Of Jharkhand & Anr** reported in 2010(7)SCC 667, in which, the Hon'ble Apex Court in para 35 and 36 has observed that:-

“35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who



had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

9. Again the Hon'ble Apex Court in the case of **Geeta Mehrotra & Anr vs State Of U.P. & Anr** reported in 2012(10) SCC 741 has considered the implication of whole family members of the husband of the complainant and in such type of cases and has observed in para -25 and 28 of the judgment, which is as follows:-

15. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is



that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognisance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.

28. We, therefore, deem it just and legally



appropriate to quash the proceedings initiated against the appellants Geeta Mehrotra and Ramji Mehrotra as the FIR does not disclose any material which could be held to be constituting any offence against these two appellants. Merely by making a general allegation that they were also involved in physical and mental torture of the complainant-respondent No.2 without mentioning even a single incident against them as also the fact as to how they could be motivated to demand dowry when they are only related as brother and sister of the complainant's husband, we are pleased to quash and set aside the criminal proceedings in so far as these appellants are concerned and consequently the order passed by the High Court shall stand overruled. The appeal accordingly is allowed".

10. Further, the Hon'ble Apex Court in the case of **Pritam Ashok Sadaphule and Others vs. The State of Maharashtra** and Others reported in (2015) 11 Supreme Court Cases 769 also has observed in para 16 and 17, which reads as follows:-

"16 What needs to be taken into consideration is, the totality of the allegations levelled by Respondent No. 2 against Appellant Nos. 2 to 5. Having perused the contents of the first information report dated 6.3.2010, as also, the charge sheet dated 27.7.2010, we felt that the submissions advanced at the hands of the Learned Counsel for the Appellants, in that the allegations levelled against Appellant Nos. 2 to 5 were vague and



omnibus could not be seriously contested. It is therefore, that we require Learned Counsel representing Respondent No. 2, to point out from the complaint dated 4.2.2010, the allegations levelled against Appellant Nos. 2 to 5. On our asking, Learned Counsel representing Respondent No. 2-Hima Pritam Sadaphule, invited our attention, to the contents of two paragraphs, from the complaint dated 4.2.2010, which are being extracted hereunder:

"Subsequently on 8.6.2007, myself and my husband Pritam Sadaphule came to Delhi and after some time we went to Mumbai. I stayed there for more than a week. During this period, Pritam, his father, mother, brother, sister i.e. entire family tortured, humiliated and harassed me to a great extent. I was beaten up by them for no reasons. They asked me for money which I had to give. Subsequently, myself and Pritam came back to Delhi and thereafter left for U.K. on 27.6.2007. In our stay at Delhi also, Pritam's offensive behavior towards me and my parents continued.

Thereafter, Pritam Sadaphule came back on 8.7.2008 to Delhi; we stayed together in my parents' home for some time, then again same ill-treatment, harassment, emotional and mental torture, humiliation was continued by Pritam Sadaphule. Thereafter, he took me to Goa for a week. There also he had beaten me with stick, abused me, insulted me and threatened me several times. Subsequently we came back to



Delhi and same ill-treatment, harassment, emotional and mental torture, humiliation was continued by Pritam Sadaphule. During these days whenever I tried to contact his family, Ashok Sadaphule, Satwashile Sadaphule, Pravin Sadaphule, Preeti Sadaphule also abused me, humiliated me, harassed me, tortured me emotionally and mentally and threatened me with dire consequences. Thereafter, myself and Pritam left for U.K. on 4.9.2008."

16. We have carefully perused the allegations point out by Learned Counsel, from the complaint of Respondent No. 2-Hima Pritam Sadaphule, dated 4.2.2010. There can be no doubt whatsoever, that the allegations leveled against Appellant Nos. 2 to 5 do not justify any inference, which would lead to the conclusion, that they could be held responsible, for an offence in the nature of Section 498A of the Indian Penal Code. In the above view of the matter, we are satisfied in accepting the prayer made in the instant appeal, with reference to Appellant Nos. 2 to 5, and to order quashing of the first information report dated 6.3.2010, and the proceedings that may have arisen therefrom, including the charge sheet dated 27.7.2010".

11. In the background of the law laid down by the Hon'ble Apex Court, in the present case also, it appears that there is no specific allegation against opposite party no. 2, who happens to be cousin father in law of the complainant – petitioner, though there is general and omnibus allegation of demand of execution



of sale deed in favour of husband of complainant – petitioner but that itself shows that beneficiary of the execution of the sale deed will only be the husband of complainant – petitioner and in the revision petition, the petitioner has taken a stand that he is residing separately. Further, husband of the complainant – petitioner is constable in the Police Department and he has independent person and as such, for the acts of husband, no criminal liability will be on other family members, who is also not directly related but the cousin father in law. Apart from that no specific allegation of cruelty or subjecting the complainant – petitioner to harassment and even no date or time of such act by the opposite party no. 2, has been mentioned in the entire complaint petition and further there is no averment in the complaint petition that opposite party no. 2 is residing separately.

12. This court is well aware of the settled principle that the inherent powers under Section 482 Cr.P.C. has to be sparingly used in order to meet the ends of justice. The Court has also to see that the law laid down may not be misused to settle one's previous score. As there are many cases, in which, the Section 498A is used as a tool to implicate the whole family members on the basis of vague allegation to settle her score due to



domestic bickering and also to pressurize other family members.

13. Considering, the above discussions, I find no illegality or impropriety in the impugned order dated 20.09.2019 passed in Criminal Revision No. 70 of 2019 by the learned Additional Sessions Judge –VIII, Kaimur at Bhabhua as allowing the criminal prosecution to continue against opposite party no. 2, will only lead to harassment of opposite party no. 2, who is a distant relative of husband of complainant – petitioner and the same will also be an abuse of process of the court.

14. Accordingly, I find no merit in the instant application and the same is hereby dismissed.

(Vinod Kumar Sinha, J)

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