

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16536 of 2017**

Arising Out of PS. Case No.-206 Year-2015 Thana- MUZZAFFARPUR COMPLAINT CASE
District- Muzaffarpur

1. Sudhanshu Kumar and Ors Son of Pramod Kumar
2. Pramod Kumar Son of Late Harinandan Prasad
3. Manju Kumari Wife of Pramod Kumar
4. Himanshu Kumar Son of Pramod Kumar All residents of Jai Prakash Nagar,
Nala Road, P.S. - Khagaria, District - Khagaria.

... .. Petitioner/s

Versus

1. State of Bihar.
2. Nisha Nidhi Daughter of Sant Kumar resident of Village - Sai Colony,
Ramdayalu Nagar, P.S. - Sadar, District - Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Adv.
For the Opposite Party/s : Mr. Sri Ashok Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT**

Date : 03-11-2022

Heard learned counsel for the petitioner and
learned counsel for State as well as learned counsel for the
opposite party no. 2.

The present quashing application has been filed
under Section 482 of Cr.P.C. for quashing of cognizance order
dated 09.07.2015 passed by S.D.J.M., East Muzaffarpur in
Complaint Case No. C- 206/15/Trial No. 2206 of 2016, whereby
cognizance has been taken under Section 498 A of I.P.C. and
Section 3/4 of Dowry Prohibition Act, 1967.

Learned counsel for the petitioner submits that

petitioner no. 1 is the husband and petitioner no. 2, 3 and 4 are father-in-law, mother-in-law and *dewar* of the complainant/O.P. No. 2, respectively.

According to them, marriage was solemnized between petitioner no. 1 with complainant/O.P. No. 2 on 09.02.2014. It has been argued that O.P. No. 2 is the wife but marriage with petitioner has never been consummated. They went to their place of work at Bangalore but in Bangalore also the marriage could not be consummated.

Learned counsel submits that from the allegation made in the complaint and S.A. that O.P. No. 2 was tortured at Bangalore for not transferring her salary in the account of the petitioner no. 1. He further alleged that the second story of torture was alleged to be made in Khagaria, while she came for *chhath puja* in the year 2018. The third story of torture was alleged to be made at Bangalore in the White Field Park. He further submits that there is absolutely no cause of action arose within the territorial jurisdiction of Muzaffarpur and as such, filing case at Muzaffarpur and taking cognizance of the reference at Muzaffarpur is barred under Section 177 of the Cr.P.C. He further submits that present case suffers for want of jurisdiction and taking cognizance in a non-jurisdiction case is

particularly abuse to the process of the Court.

Before dealing with the merit of the present quashing application, it is necessary to consider the nature and scope of the inherited power of the High Court under Section 482 of the Cr.P.C. 1973 (Act no. 2 of the 74) earlier, was in Section 561 A of the Cr.P.C. 1898 (Act no. 5 of 1898). The said section saves the inherent power of the High Court to make fresh orders as measure necessary in 3 different situations -

A. To give effect to an order under this Court.

B. To prevent abuse of the process of the Court.

C. To otherwise secure the ends of justice.

In this regard 3 Judge Bench defence reported in A.I.R. 1960 Supreme Court 866 (R. L. Kapoor) Vs State of Punjab. From the other cases where the inherited jurisdiction to cause the proceeding can and should be associated under

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the First Information Report or the complaint, even if they are taken at their face value

and accepted in their entirety, do not constitute

In case of Bhajan Lal vs. State of Haryana – reported in 1992 supp(1) SCC, 335 : 1992, SCC (criminal 426) a detail study was conducted for dealing the situations, where the Court may exercise its extra jurisdiction and laid down a list of illustrative examples where quashing may be appropriate. The said decision has been followed in case of Pramod Suryavan Pawar vs. State of Maharashtra and another – reported in 2019 volume-IX, SCC 608 has supported the list of illustrative examples where quashing may be appropriate which are as follows:

(1) Where the allegations made in 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended

with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

But in case of Dhruv Ram Murlidhar Sonar vs. State of Maharashtra – reported in 2019(18) SCC 191 in its paragraph no. 13, it has been held that for quashing the proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint does not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent power.

Here, in the present case, the complainant has stated in her S.A. that prior to her marriage, her husband was residing at Bangalore, where he was working as an I.T. Specialist. She has narrated that in her *Sasural* at Khagaria, she resided for 7-8 days, thereafter, both the husband and the wife started residing at Bangalore. Her *dewar* was also residing at Bangalore, as he was searching for a job. It has also been stated that the father-in-law and mother-in-law of the complainant were used to visit Bangalore very frequently. Allegation of

demand of transfer of money, from the account of the complainant to the account of her husband forcefully, is there at Banglore. And upon non-fulfillment, the allegation of assault by the husband and the *dewar*, is at Banglore.

On the occasion of *Chath puja*, the allegation of torture by way of snatching complainant's mobile and taking her signature on plane paper is also there, as well as, demand of Rs. 30,00,000/- was made at Khagaria. All four witnesses have also stated in their inquiry that after marriage, complainant was residing at Banglore and story of torture is alleged to happen either at Banglore or at Khagaria. In Banglore, there was one petition filed at Banglore Police Station on which no case was instituted. But the present case has been filed at Muzaffarpur. This is a clear case of abuse to the process of the Court, particularly when the Court of Muzaffarpur had taken the cognizance ignoring the factual matrix that the offences were alleged to be committed either at Banglore or at Khagaria, which has come on record by way of S.A. and for inquiry witnesses. The allegation of demand of dowry is not against any specific person, rather a general and vague allegation has been made. But ignoring the same, the Trial Court has taken cognizance under Section 498 A of the I.P.C. read with 3/4 of

the D.P. Act.

Counsel for the O.P. submits that Section 498 A of the I.P.C. and 3/4 of the D.P. Act is a continuous offence, therefore, Court has rightly taken cognizance in the present case and issued process against the accused petitioners.

In the opinion of the Court taking cognizance, suffers from defect of the jurisdiction as all places in complaint petitioner, S.A. and enquiry, the complaint and witnessed clearly state that alleged offence took place either at Banglore or at Khagaria. Therefore, this Cr. Misc. Application is allowed and the cognizance order is dated 09.07.2015 passed by S.D.J.M., East Muzzarfarpur in Complaint Case No. C-206/15/Trial No. 2206 of 2016 is hereby quashed.

The complainant is at liberty to file a fresh case before the Court having jurisdiction to entertain such complaint.

(Dr. Anshuman, J.)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	