

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34597 of 2019

Arising Out of PS. Case No.-1804 Year-2017 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

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Abhinav Kumar, son of Mr. Birendra Kumar, Resident of F-4, Madhav Apartment Durga Mandir Road, P.O and P.S-Heerapur, District-Dhanbad (Jharkhand), at present Resident of Flat No.1202A Wing, Bhumi Heights, Sector 8, P.O and P.S.-Kharghar, District-Navi Mumbai, Maharashtra.

... .. Petitioner

Versus

1. The State of Bihar
2. Richa Sindhu, wife of Abhinav Kumar, Resident of Professor Colony, Pipra Saraswati Nagar, P.O and P.S.-Ward No.16, District-Begusarai, Bihar

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Amit Shrivastava, Sr. Advocate Mr. Apurv Harsh, Advocate
For the State	:	Mr. Prem Kumar Jha, APP
For Opp. Party No.2	:	Mr. Rohit Raj, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 18-10-2023

This application has been filed for quashing of the order dated 01.12.2018 passed by learned Sub Judge, VIII -cum- A.C.J.M.-VI, Begusarai, in Complaint Case No.1804 of 2017, by which the learned Judge has taken cognizance against the petitioner for the offence under Sections 498-A of the Indian Penal Code.

2. As per the complaint petition, the marriage of the petitioner and opposite party no.2 was solemnized on 28.04.2016 in a temple as per Hindu rites and rituals. The



allegation against the petitioner is that earlier he was married to one Nidhi Kumari and the said marriage got dissolved with mutual consent of the parties but this fact has been concealed from the complainant at the time of marriage. Further allegation is that the petitioner is impotent and used to torture the opposite party no.2.

3. Sri Amit Srivastava, learned senior counsel assisted by Sri Apurv Harsh, learned counsel for the petitioner submits that before the marriage, the opposite party no.2 was well aware about the first marriage of petitioner and also the divorce with the first wife. He further submits that opposite party no.2 has left her matrimonial home on 16.08.2016 itself and thereafter on 06.05.2017 i.e. after eight months of abandoning her husband, the opposite party no.2 filed Matrimonial Case No.34 of 2017 in the Court of Principal Judge, Begusarai, for divorce on the ground of impotency and thereafter, the present complaint case has been filed on 31.10.2017 only with a view to harass the petitioner and his family members.

4. In this case, a supplementary affidavit has been filed by the petitioner wherein the petitioner highlights the issue that initially the opposite party no.2 had filed the petition



under Section 12 of the Hindu Marriage Act, 1955 for dissolution of marriage on the ground of impotency but after two years of filing of said petition, the opposite party no.2 had converted same under Section 13 of the Hindu Marriage Act, for dissolution of marriage on the ground of cruelty and the entire version of the opposite party no.2 got drastically changed, such amendments are impermissible in law. In support of the aforesaid submission, learned senior counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court in the case of ***Bharat Karsondas Thakkar vs. M/S Kiran Construction Company and Ors.*** Reported in ***AIR 2008 SC 2134.***

5. Learned senior counsel for the petitioner further submits that the Family Court vide judgment and order dated 29.03.2019 dissolved the marriage and directed the petitioner to pay an amount of Rs.21,00,000/- to the opposite party no.2 as permanent alimony and for executing the judgment and decree, the opposite party no.2 filed Execution Case No. 03 of 2019 but the proceeding of the said Execution Case has been stayed by a Division Bench of this Court vide order dated 25.10.2019.

6. Learned senior counsel for the petitioner



further submits that the present complaint case has been filed only with a view to harass the petitioner and his family members to fulfill the illegal demands of opposite party no.2. He further submits that the petitioner is ready to pay Rs.21,00,000/- along with interest to the opposite party no.2, as awarded by the Family Court but the opposite party no.2 is demanding Rs.1,00,000,00/- which shows the malafide intention of the opposite party no.2.

7. Learned counsel for the opposite party no.2 has submitted that the petitioner has suppressed the fact of his earlier marriage, which has been dissolved and also about his impotency from the opposite party no.2 at the time of marriage and therefore, the cognizance order is just and proper and this Court may not interfere with the same.

8. I have considered the submissions of the parties and perused the materials on record.

9. In the present case, the petitioner, who is the husband of opposite party no.2-complainant wants quashing of the order taking cognizance by considering the materials brought on record and the argument advanced by the petitioner in his defence. From the judicial pronouncements of the Hon'ble Supreme Court, the inherent powers of this Court under Section



482 of the Cr.P.C. for quashing a complaint/FIR are limited and the same cannot be exercised if the case is not an exceptional case. The Hon'ble Supreme Court in various judgments including the judgment rendered in the case of ***State of Haryana & Ors. Versus Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604***, has enumerated the categories under which the quashing application may be allowed.

10. The Hon'ble Supreme Court in the case of ***State of Gujarat vs. Dilipsinh Kishorsinh Rao*** reported in ***2023 SCC OnLine SC 1294*** in paragraph no.8 has held as under:-

“8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.”

11. In the present case, from going through the complaint petition, it appears that a *prima facie* case is made out against the petitioner and therefore, this Court is not convinced



to quash the order taking cognizance and the complaint only on the submission of the petitioner that the present complaint case is a malafide prosecution initiated by the complainant(wife). The allegations need to be established by the complainant in the trial court and the prosecution cannot be scuttled at such an initial stage that too when there are direct allegations against the petitioner. Reliance can be placed upon a decision of the Hon’ble Supreme Court in the case of *State of Bihar vs. P.P. Sharma* reported in *1992 Supp (1) SCC 222*.

12. Considering the facts of the case and also the law laid down by the Hon’ble Supreme Court in the case of *State of Bihar vs. P.P. Sharma (supra)* and *State of Gujarat vs. Dilipsinh Kishorsinh Rao*, I am not inclined to quash the order taking cognizance against the petitioner. Accordingly, this application is dismissed.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R.
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