

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL MISCELLANEOUS No.17328 of 2016**

Arising Out of PS. Case No.-613 Year-2010 Thana- VAISALI COMPLAINT CASE District-  
Vaishali

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1. Md. Asgar, son of late Md. Latif
  2. Sahana Khatoon, wife of Md. Asgar
  3. Md. Israfil, son of Md. Asgar
  4. Mosarakh Khatoon Wife of Md. Israfil. All resident of Village Rampur Ramhar, P.S. Jandaha, District Vaishali.
  5. Gulshan Khatoon Wife of Md. Maksud
  6. Md. Maksud Son of Late Md. Amir
  7. Md. Ajim Son of Late Md. Amir
  8. Anguri Khatoon daughter of Md. Azim All resident of Village Patepur, P.S. Patepur, District Vaishali.
  9. Md. Asamul Son of Md. Asagr, resident of Village Rampur Ramhar, P.S. Jandaha District Vaishali.

... .. Petitioner/s

Versus

1. State of Bihar
2. Sabnam Khatoon, wife of Md. Asamul, presently residing at C/o Most. Samima Khatoon, Village Titra, P.S Raja Pakar, District Vaishali

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Srinandan Prasad Singh, Sr. Advocate.  
Mr. Prakritita Sharma, Advocate.  
For the Opposite Party/s : Dr .Ajeet Kumar, APP.

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**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH**

**ORAL JUDGMENT**

**Date : 13-09-2023**

Heard Mr. Srinandan Prasad Singh, learned senior counsel along with Ms. Prakritita Sharma, learned counsel appearing on behalf of the petitioners and Dr. Ajeet Kumar, learned APP for the State.



2. The present quashing application has been filed under Section 482 of the Code of Criminal Procedure against the order dated 13.08.2010 by which learned Sub Divisional Judicial Magistrate, Vaishali at Hajipur has taken cognizance against the petitioners under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act in Complaint Case No. C1-613/2010 TR No. 1250/14.

3. In the complaint, the complainant Sabnam Khatoon has alleged that she was married to petitioner no.9 Md. Asamul and after two months of her marriage, her in-laws started demanding a colour TV, motorcycle and cash and due to non-fulfillment of demand of dowry, she was subjected to various sorts of torture by her in-laws including her husband who are petitioners herein and ultimately she was kicked out of her matrimonial house. Well wishers of both the parties tried to get the dispute settled, but in vain. The Complainant thereafter filed Maintenance Case No. 28 of 2011 and the Principal Judge, Vaishali vide order dated 20.05.2012 after proper consideration of the case had fixed interim maintenance of Rs.2000/- per month.

4. Learned counsel appearing on behalf of the petitioners submits that the petitioners had tried to compromise



with the complainant – opposite party no.2 but the same failed as no cooperation was extended by the opposite party no.2. The petitioners never demanded any dowry or ill-treated the complainant rather they tried to keep the complainant with full dignity and honour and even tried to convince her for which the complainant herself refused to live along with the petitioner no.9 who is her husband and other family members. Learned counsel appearing on behalf of the petitioners admits that she is unaware of the present status of the stage of the trial. However, she submits that the allegation levelled against the petitioners under Section 498A IPC and Section 4 of the Dowry Prohibition Act is not made out. Learned counsel further submits that the Apex Court in the case of **Kahkashan Kausar Alias Sonam and Others Vs. State of Bihar and Others** reported in (2022) 6 SCC 599 upon proper discussion and interpretation of Section 498A IPC and referring to several judgment has expressed concern over the misuse of Section 498-A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. Learned counsel in support of her case has relied on Paragraph Nos. 17 to 22 of the said judgment and the same are reproduced hereinafter:

“17. The abovementioned decisions clearly



demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

**18.** Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, it is revealed that general allegations are levelled against the appellants. The complainant alleged that “all accused harassed her mentally and threatened her of terminating her pregnancy”. Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.

**19.** Furthermore, regarding similar allegations of harassment and demand for car as dowry made in a previous FIR Respondent 1 i.e. the State of Bihar, contends that the present FIR pertained to offences committed in the year 2019, after assurance was given by the husband Md. Ikram before the learned Principal Judge, Purnea, to not harass the respondent



wife herein for dowry, and treat her properly. However, despite the assurances, all accused continued their demands and harassment. It is thereby contended that the acts constitute a fresh cause of action and therefore the FIR in question herein dated 1-4-2019, is distinct and independent, and cannot be termed as a repetition of an earlier FIR dated 11-12-2017.

**20.** Here it must be borne in mind that although the two FIRs may constitute two independent instances, based on separate transactions, the present complaint fails to establish specific allegations against the in-laws of the respondent wife. Allowing prosecution in the absence of clear allegations against the appellant in-laws would simply result in an abuse of the process of law.

**21.** Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the appellant-accused, it would be unjust if the appellants are forced to go through the tribulations of a trial i.e. general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this Court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must, therefore, be discouraged.

**22.** In view of the above facts and discussions, the impugned order dated 13-11-2019 [*Mohd. Ikram v. State of Bihar*, 2019 SCC OnLine Pat 1985] passed by the High Court of Patna is set aside. The impugned FIR No. 248 of 2019 against the appellants under Sections 341, 323, 379, 354, 498-A read with Section 34IPC stands quashed.”

5. Considering the nature of allegation made in the Complaint as well as law settled by the Apex Court, I am of the opinion that the impugned order taking cognizance dated 13.08.2010 is not sustainable and the same is set aside and



quashed in the light of the observations made by the Apex Court  
in the case of **Kahkashan Kausar Alias Sonam (supra)**.

6. The quashing application stands disposed of.

**(Purnendu Singh, J)**

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