

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25143 of 2016

Arising Out of PS. Case No.-37 Year-2015 Thana- MAHILA PS District- Buxar

1. Kalimullah Khan @ Kalimulla Khan and Ors Son of Karimullah Khan.
2. Hasibun Nisha @ Hasibu Nesha Wife of Karimullah Khan
3. Shahid Khan @ Md. Shahid Khan Son of Alim Khan.
4. Nahida Khatoon @ Shahida Khattun D/o. Karimullah Khan.
5. Farukh Khan @ Md. Farukh Khan Son of Meraj Khan
All resident of Village- Usiya, P.S.- Dildar Nagar, District- Gajipur U.P..

... .. Petitioners

Versus

1. The State of Bihar
2. Farjana Khatoon Wife of Kalimullah, resident of Village-Khidirpur, P.S.-
Jamania, District-Gajipur U.P At present- Sarimpur, P.S.-Industrial, District-
Buxar.

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr.Saroj Kumar Sharma, Advocate Mr.Anupam Bahadur, Advocate Mr.Vikash Kumar, Advocate
For the Opposite Party/s :		Mr.Surendra Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 21-02-2024

Heard learned counsel appearing on behalf of the
petitioners and learned A.P.P. for the State.

2. The petitioners have preferred this application for quashing of the cognizance order dated 22.04.2016 passed by learned S.D.J.M., Buxar in connection with G.R. No. 2967/2015, Tr. No. 2758/2016 arising out of Buxar (Mahila) P.S. Case No. 37 of 2015 whereby learned court has taken cognizance under Section 341, 323, 504, 506, 509, 354 & 498-A of the Indian Penal Code and Section 3/4 of the D.P. Act.



3. As per the prosecution story, the informant namely, Farjana Khatoon has alleged that she is living at her relative's house which is situated in Sarimpur, P.S. - Industrial Area, District – Buxar. On 02.05.2012, her marriage was solemnized with one Kalimullah at village – Usiya, District – Gazipur (U.P.) and in the said marriage, her parents had given dowry to the accused persons as per his capacity. She further alleged that after marriage accused persons further demanded one motorcycle and cash of Rs. One Lakh for business and on 28.09.2015, while she was alone at her relative's house, all the accused persons came there and assaulted her and taken away her gifts and ornaments etc. Thereafter, she lodged the present First Information Report (in short the 'F.I.R.').

4. Mr. Saroj Kumar Sharma, learned counsel appearing on behalf of the petitioners submitted that the present F.I.R. in issue was lodged with an ulterior motive to harass the petitioner No. 1/husband and his family members. In support of his submission, learned counsel submitted that as per F.I.R., the date of occurrence is 28.09.2015, where it has been alleged by O.P. No. 2/informant/wife that her in-laws family members came to her paternal home at about 7:00 P.M. and misbehaved with her and family members and also assaulted her. They



started raising demand of cash and motorcycle as dowry, but on perusal of the maintenance petition which authored by informant herself and registered before the Family Court, Gazipur, Uttar Pradesh as Maintenance Case No. 192/2016, it appears in paragraph '7' that on 28.09.2015, her brother Nasim Khan and cousin brother Khurshid Khan came to her matrimonial home and brought her to parental village/house after following customary rights and rituals (*Bidai*). It is submitted that if statement as authored by the informant in aforesaid Maintenance Case be taken into consideration, the occurrence as alleged, through F.I.R. is not appearing convincing on its face.

5. It is further pointed out by learned counsel that opposite party no. 2 wrote a letter to petitioner no. 1/husband and post it to Saudi Arabia, where he was present at that point of time in connection with his professional engagement, demanding '*Talak*' from the petitioner, where by acting upon, petitioner no. 1/husband announced '*Triple Talak*' on 16th July, 2015 and communicated it to opposite party no. 2 through letter. At this stage, it is submitted that at that point of time '*Triple Talak*' was valid and was not made an offence.

6. It is further submitted by learned counsel that after



dissolving marriage, opposite party no. 2 solemnized her marriage with her nearest relative at village Sarimpur, P.S. - Buxar Industrial Area, District – Buxar and enjoying her conjugal life. It is submitted that in the occurrence dated 28.09.2015, the F.I.R. in issue was lodged on 01.11.2015 i.e. after the delay of 3½ months, which suggest that the present F.I.R. was lodged in very planned and formulated manner to harass the petitioner no. 1/husband and his family members.

7. While concluding argument, Mr. Sharma submitted that opposite party no.2 and petitioner no. 1 dissolved their marriage under due process of law as available in their personal law and also living separately and as such continuing with present proceeding would only amount to abusing the process of law. In support of his submission, learned counsel relied upon legal report of Hon'ble Supreme Court, as reported in the matter of **Kahkashan Kausar @ Sonam & Ors. Vs. State of Bihar & Ors.** reported in **2022 Live Law (SC) 141 = (2022) 6 SCC 599**, where learned counsel pressed paragraph Nos. 17 to 22 of the said judgment, having bearing over the merit of this case, which are being reproduced hereinbelow for the sake of convenience and better understanding:

“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 34 IPC stands quashed.”

8. Learned counsel also relied upon legal report of Hon’ble Apex Court in the matter of **Abhishek Vs. State of Madhya Pradesh** reported through **2023 Live Law (SC) 731** and pressed paragraph nos. 14, 15 and 16 of the said judgment which are being reproduced hereunder for a ready reference:

“14. In Preeti Gupta and another vs. State of Jharkhand and another [(2010) 7 SCC 667], this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was



observed that 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, as allegations of harassment by husband's close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection.

15. Earlier, in **Neelu Chopra and another vs. Bharti [(2009) 10 SCC 184]**, this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the 'be all and end all' of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that offence. These observations were made in the context of a matrimonial dispute involving Section 498A IPC.

16. Of more recent origin is the decision of this Court in **Mahmood Ali and others vs. State of U.P. and others (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023)** on the legal principles applicable apropos Section 482 Cr.P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.P.C. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.”



9. It would be further apposite to reproduce paragraph '102' of the legal report of Hon'ble Supreme Court in the case of **State of Haryana and Ors. Vs. Bhajan Lal and Ors [(1992) Supp (1) SCC 335]** which is being reproduced hereunder for a ready reference:

“**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 Act concerned (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 Act concerned, 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.”

10. Despite repeated calls, learned counsel representing opposite party no. 2 failed to join the present proceeding.

11. Learned A.P.P. for the State opposes the present application.

12. From perusal of the record and by taking note of the aforesaid factual and legal submissions, it transpires that petitioner no.1/husband has obtained divorce from opposite party no. 2 as per their personal law, whereas rest of the petitioners, who are in-laws, facing a general and omnibus allegation regarding demand of dowry. Date of occurrence i.e. 28.09.2015 also appears doubtful in view of statement as mentioned in paragraph ‘7’ of the maintenance petition filed in the Family Court, Gazipur (U.P.). F.I.R. also lodged with a delay of 3½ months, which also suggest on it’s face that under a



planned and formulated manner petitioners were implicated. Accordingly, continuing with present proceeding would amount to abuse of the process of law.

13. In the aforesaid view of the matter, the order of cognizance dated 22.04.2016 passed by learned S.D.J.M., Buxar in connection with G.R. No. 2967/2015, Tr. No. 2758/2016 arising out of Buxar (Mahila) P.S. Case No. 37 of 2015 alongwith all its consequential proceedings be quashed and set-aside.

14. This application stands allowed.

15. Let a copy of this order be communicated to the learned trial court immediately.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	27.02.2024
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