

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14492 of 2024

Arising Out of PS. Case No.-47 Year-2023 Thana- MAHILA PS District- Khagaria

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Mahesh Kumar @ Mahesh Mahto Son of Ramashish Mahto Resident of
Village- Ishlampur, P.S.- Muffasil, District- Khagaria

... .. Petitioner/s

Versus

1. The State of Bihar Patna
2. Kavita Devi Wife of Mahesh Kumar @ Mahesh Mahto, D/o Manik Mahto
R/o Village- Bakhri Bazar, Ward No. 15, P.S.- Gogri, Dist.- Begusarai

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Santosh Singh, Advocate

For the Opposite Party/s : Mr. Gauri Shankar Gupta, APP

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 12-03-2024 Heard Mr. Santosh Singh, learned counsel appearing

on behalf of the petitioner and Mr. Gauri Shankar Gupta,

learned APP appearing on behalf of the State.

2. The petitioner apprehends his arrest in connection
with Mahila P.S. Case No. 47 of 2023 registered under Sections
323, 341, 498(A), 504, 506/34 of the Indian Penal Code and
Section 3/4 of the Dowry Prohibition Act.

3. The present case relates to matrimonial dispute
between the petitioner and Opposite Party No.2, who are
husband and wife respectively. In complaint case filed by
Opposite Party No.2, allegations of cruelty, causing hurt and
wrongful restraint for non-fulfillment of dowry have been



alleged against the petitioner and other in-laws of the complainant.

4. Learned counsel appearing on behalf of the petitioner, who is the husband of the Opposite No.2, submitted that the allegations against the petitioner are general and omnibus. Learned counsel, on the instruction of the petitioner, orally informed that petitioner is ready to live along with Opposite Party No.2, endeavoring to fulfill all her financial, as well as, physical desire and also he will keep her with full care, respect and dignity. Petitioner has clean antecedent.

5. Learned APP appearing on behalf of the State has submitted that the dispute between the husband and wife being matrimonial dispute, can be resolved amicably between the parties.

6. Heard the parties.

7. Question arises as to whether when the parties have shown their willingness that they want to resolve their dispute and lead a happy conjugal life, at an interlocutory stage, can pre-arrest bail can be granted considering the offence as alleged against the petitioner.

8. The legislature came out with the Family Court Act, 1984, with the objective of providing speedy settlement of



family disputes. Section 9 of the Act casts a duty on the Family Court to make efforts for settlement between the parties. The provision is reproduced hereinbelow:-

9. Duty of Family Court to make efforts for settlement.—(1) In every suit or proceeding,

endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent

with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement

in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject

to any rules made by the High Court, follow such procedure as it may deem fit.

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable

possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such

period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceedings.

9. Taking note of the changing societal dynamics and the need for law to adapt accordingly, the Apex Court in the case of ***K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226***, has elucidated the emerging requirement of mediation and settlement in matters pertaining to Section 498A of IPC, which is a non-compoundable offence as per law. The relevant paragraphs are reproduced hereunder:-

“40. The idea of pre-litigation mediation is also catching up. Some mediation centres have, after giving wide publicity, set up “Help Desks” at



prominent places including facilitation centres at court complexes to conduct pre-litigation mediation. We are informed that in Delhi Government Mediation and Conciliation Centres, and in Delhi High Court Mediation Centre, several matrimonial disputes are settled. These centres have a good success rate in pre-litigation mediation. If all mediation centres set up pre-litigation desks/clinics by giving sufficient publicity and matrimonial disputes are taken up for pre-litigation settlement, many families will be saved of hardships if, at least, some of them are settled.

41. While purely a civil matrimonial dispute can be amicably settled by a Family Court either by itself or by directing the parties to explore the possibility of settlement through mediation, a complaint under Section 498-A IPC presents difficulty because the said offence is not compoundable except in the State of Andhra Pradesh where by a State amendment, it has been made compoundable. Though in Ramgopal v. State of M.P. [(2010) 13 SCC 540 : (2011) 2 SCC (Cri) 145] , this Court requested the Law Commission and the Government of India to examine whether offence punishable under Section 498-A IPC could be made compoundable, it has not been made compoundable as yet. The courts direct parties to approach mediation centres where offences are compoundable. Offence punishable under Section 498-A being a non-compoundable offence, such a course is not followed in respect thereof.

42. This Court has always adopted a positive approach and encouraged settlement of matrimonial disputes and discouraged their escalation. In this connection, we must refer to the relevant paragraph from G.V. Rao v. L.H.V. Prasad [(2000) 3 SCC 693 : 2000 SCC (Cri) 733] , where the complaint appeared to be the result of matrimonial dispute, while refusing to interfere with the High Court's order quashing the complaint, this Court made very pertinent observations, which read thus: (SCC p. 698, para 12)

“12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often



assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their 'young' days in chasing their 'cases' in different courts."

43. In B.S. Joshi v. State of Haryana [(2003) 4 SCC 675 : 2003 SCC (Cri) 848 : AIR 2003 SC 1386] after referring to the above observations in G.V. Rao case [(2000) 3 SCC 693 : 2000 SCC (Cri) 733] , this Court stated that the said observations are required to be kept in view by the courts while dealing with the matrimonial disputes and held that the complaint involving offence under Section 498-A IPC can be quashed by the High Court in exercise of its powers under Section 482 of the Code if the parties settle their dispute. Even in Gian Singh v. State of Punjab [(2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988] (SCC p. 341, para 58), this Court expressed that certain offences which overwhelmingly and predominantly bear civil flavour like those arising out of matrimony, particularly relating to dowry, etc. or the family dispute and where the offender and the victim had settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may quash the criminal proceedings if it feels that by not quashing the same, the ends of justice shall be defeated.

44. We, therefore, feel that though offence punishable under Section 498-A IPC is not compoundable, in appropriate cases if the parties are willing and if it appears to the criminal court that there exist elements of settlement, it should direct the parties to explore the possibility of settlement through mediation. This is, obviously, not to dilute the rigour, efficacy and purport of Section 498-A IPC, but to



locate cases where the matrimonial dispute can be nipped in bud in an equitable manner. The Judges, with their expertise, must ensure that this exercise does not lead to the erring spouse using mediation process to get out of clutches of the law. During mediation, the parties can either decide to part company on mutually agreed terms or they may decide to patch up and stay together. In either case for the settlement to come through, the complaint will have to be quashed. In that event, they can approach the High Court and get the complaint quashed. If, however, they choose not to settle, they can proceed with the complaint. In this exercise, there is no loss to anyone. If there is settlement, the parties will be saved from the trials and tribulations of a criminal case and that will reduce the burden on the courts which will be in the larger public interest. Obviously, the High Court will quash the complaint only if after considering all circumstances it finds the settlement to be equitable and genuine. Such a course, in our opinion, will be beneficial to those who genuinely want to accord a quietus to their matrimonial disputes.

46.2. *The criminal courts dealing with the complaint under Section 498-A IPC should, at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement and both the parties are willing. However, they should take care to see that in this exercise, rigour, purport and efficacy of Section 498-A IPC is not diluted. Needless to say that the discretion to grant or not to grant bail is not in any way curtailed by this direction. It will be for the court concerned to work out the modalities taking into consideration the facts of each case.*

(emphasis supplied)

10. While the aspect of mediation in matters concerning Section 498A has been dealt with in ***K. Srinivas Rao(Supra)***, the Apex Court in the Case of ***Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273***, guideline has been laid down in dealing with the matter of unnecessary arrest in cases under Section 498A IPC. It held as follows:-



“10. We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;”

11. The observation made in ***Arnesh Kumar Case(supra)*** has been reiterated in the case of ***Satender Kumar Antil v. CBI, (2022) 10 SCC 51***, wherein the Apex Court held as follows:-

“29. Despite the dictum of this Court in Arnesh Kumar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] , no concrete step has been taken to comply with the mandate of Section 41-A of the Code. This Court has clearly interpreted Sections 41(1)(b)(i) and (ii) inter alia holding that notwithstanding the existence of a reason to believe qua a police officer, the satisfaction for the need to arrest shall also be present. Thus, sub-clause (1)(b)(i) of Section 41 has to be read along with sub-clause (ii) and therefore both the elements of “reason to believe” and “satisfaction qua an arrest” are mandated and accordingly are to be recorded by the police officer.”

12. Recently in the case of ***Asfak Alam Vs. State of Jharkhand & Anr. in Cr. Appeal No.2207 of 2023*** issued a



directive to circulate circulars, notifications and instructions aimed at ensuring strict adherence by police authorities and criminal courts to follow the guidelines laid down by the Apex Court in **Arnesh Kumar case (Supra)**.

13. Considering the rival submissions made on behalf of the parties, the allegation made in the complaint, totality of the circumstances and the fact reveals that a general and omnibus allegation has been made against the petitioner. The parties are willing to settle their dispute amicably. The petitioner has no criminal antecedent and custodial interrogation is not necessary. I am of the opinion that the petitioner has made out a *prima facie* case to be released on anticipatory bail. The petitioner, above named, is directed to be released on pre-arrest bail, in the event of his arrest or surrender before the learned court below within a period of four weeks from today, on furnishing bail bond of Rs.10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate – Ist, Khagaria concerned court in connection with Mahila P.S. Case No. 47 of 2023, subject to conditions as laid down under Section 438(2) of the Cr.P.C.

14. In case of failure to live together, the parties may



take steps to resolve their matrimonial dispute in an amicable manner. If required, they may file an application before the learned district court for referring the matter to the concerned District Mediation Centre.

15. With the above observation/direction, the present bail application stands disposed of.

(Purnendu Singh, J.)

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