

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18655 of 2016

Arising Out of PS. Case No.-70 Year-2015 Thana- RUPASPUR District- Patna

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1. Juli Kumari, wife of Jiresh Kumar, D/o Bacha Sharma, Resident of village-Sikandar Pur, P.S.- Bihta, District- Patna
 2. Nidhi Kumari, wife of Manish Kumar, D/o Bacha Sharma, resident of village-Gowai, P.S.- Bikram, District- Patna

... .. Petitioners

Versus

1. The State of Bihar.
2. Sindhu Devi, D/o Sri Makeshvar Sharma, Resident of Mohalla-Ram Jay Pal Nagar, Gola Road, H.N. 161 (near Safi Allam IPS), P.S.- Rupash Pur, District- Patna

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. Gopal Govind Mishra, Advocate
For the State	:	Mr. Anant Kumar, APP
for the Opposite Party No.2:		Mr. Krishna Kant Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 29-03-2024

Heard learned counsel for the petitioners and learned A.P.P. for the State duly assisted by learned counsel for the opposite party no. 2.

2. The present application has been filed for quashing of the order dated 25.07.2015 passed by the learned Additional Chief Judicial Magistrate, Danapur whereby the learned Jurisdictional Magistrate has taken cognizance for the offences punishable under Sections 494 and 498-A read with 34 of the Indian Penal Code (for short 'IPC') and process has been issued against the petitioners in connection with



Rupashpur P.S. Case No.70 of 2015.

3. The case of the prosecution as per FIR is that the husband of complainant has solemnized second marriage with another girl illegally with the help of the petitioners and other co-accused persons named in the FIR. Informant, namely Sindhu Devi, alleged that her marriage was solemnized with one Sri Ashutosh Kumar on 27.02.2009 in accordance with Hindu Rites and Rituals. She further alleged that a baby girl was born on 21.02.2010 from said wedlock. Informant further stated that on 18.03.2015, she along with her father got information that her husband solemnized second marriage with one Mintu Kumari with the help of the petitioners and other co-accused person on 02.12.2014 and after finding information correct, she instituted present case against the petitioners and other family members as well as relative of the family of her husband.

4. It is submitted by learned counsel appearing on behalf of the petitioners that apparently from the narration of the FIR, no *prima facie* case made out against the petitioners. It is submitted that both petitioners are married Nanad (sister-in-law) of the informant, where marriage of petitioner no.1 was



solemnized in the year 1998 and marriage of petitioner no.2 was solemnized in the year 2006 and since then, they are living separately with their families, having otherwise no connection with daily and domestic affairs with the family of the informant and her husband. It is further submitted that initially the FIR was lodged under Sections 494/34 of the IPC, as husband of the informant solemnized his marriage without getting it dissolved with opposite party no.2 but, after investigation, the charge-sheet was submitted under Section 498-A of the IPC also, without having any iota of allegation through written information available against petitioners. While concluding argument, it is pointed out by learned counsel that prior to this case, a complaint case was also lodged by opposite party no.2 bearing Complaint Case No.233(c) of 2013, where learned Trial Court after inquiry took cognizance for the offence punishable under Section 498-A of IPC and Section 4 of the Dowry Prohibition Act vide order dated 22.04.2013. It is also submitted by learned counsel that petitioners were also arrayed as an accused in said complaint petition. He further submitted that multiplicity of lodging case is only reflecting the harassing attitude out of ulterior



and oblique motive of opposite party no.2 and, therefore, the impugned order taking cognizance is fit to be quashed and set aside. In support of his submissions, learned counsel for the petitioners relied upon legal report of Hon'ble Supreme Court as passed in the matter of **Abhishek vs. State of Madhya Pradesh** reported in **2023 SCC Online SC 1083**.

5. Learned APP for the State duly assisted by learned counsel for opposite party No.2 while opposing the application submitted that petitioners are married sisters-in-law. It is submitted that both the petitioners have actively participated in the occurrence and were instrumental to solemnized second marriage of husband of opposite party no.2.

6. It would be apposite to reproduce para- 13, 14, 15, 16 & 17 of the legal report of Hon'ble Supreme Court passed in the case of **Abhishek Case (supra)**, which are as under:-

"13. Instances of a husband's family members filing a petition to quash criminal proceedings launched against them by his wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty abound on this score. We may now take note of some decisions of particular relevance. Recently, in *Kahkashan Kausar alias Sonam v. State of Bihar* [(2022) 6 SCC 599], this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC. Noting that the foremost issue that required determination was



whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial disputes. This Court observed that false implications by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked, would result in misuse of the process of law. On the facts of that case, it was found that no specific allegations were made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict severe scars upon the accused and such an exercise ought to be discouraged.

14. In *Preeti Gupta v. State of Jharkhand* [(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 v. 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 v. State of U.P. (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.

17. In State of Haryana and Ors. Vs. Bhajan Lal and Ors [(1992) Supp (1) SCC 335], this Court had set out, by way of illustration, the broad categories of cases in which the inherent power under Section 482 Cr. P.C. could be exercised. Para 102 of the decision reads as follows:

‘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.”

7. In view of aforesaid factual and legal submissions and by taking note of fact that both the petitioners are married sisters-in-law living separately much prior to the marriage of opposite party no.2 with their brother namely, Ashutosh Kumar, where from the narration of written information, no *prima facie* case appears to be made out against the petitioners and, as



such, by taking note of guidelines as available under guideline nos. (1), (5) and (7) of the legal report of Hon’ble Supreme Court in the case of **Bhajan Lal** (supra), which was considered by Hon’ble Supreme Court in the case of **Abhishek** (supra), accordingly, the impugned cognizance order dated 25.07.2015 passed by the learned Additional Chief Judicial Magistrate, Danapur in connection with Rupashpur P.S. Case No.70 of 2015 *qua* petitioners with all it’s consequential proceedings are hereby quashed and set aside.

8. The application stands allowed.

9. Let a copy of this judgment be communicated to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
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