

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41354 of 2015**

Arising Out of PS. Case No.-42 Year-2014 Thana- HAYAGHAT District- Darbhanga

1. Ghazala Karim, wife of Zeya Kaim,
2. Zeya Karim, son of Md. Mahboob Hassan, Both residents of Village-
Chausiwan, Post Office- Rapauli, Police station- Musridharari, District-
Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Nazia Hasan Syed, daughter of Syed Anwarul Hasan, resident of Village-
Tajpur, Post Office- Tajpur, Police Station- Tajpur, District- Samastipur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Syed Masleh-Uddin Ashraf, Advocate
For the Opposite Party/s : Mr.J.N. Thakur, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 27-06-2024

1. Heard learned counsel appearing on behalf
of the parties.

2. The present application has been filed for
quashing the order dated 26.03.2015 passed in
Hayaghat P.S. Case No. 42 of 2014 dated 12.07.14 by
the learned Judicial Magistrate, Darbhanga by which
cognizance of an offence punishable under section 498A
of the Indian Penal Code and 3/4 of the Dowry
Prohibition Act has been taken out of charge sheet No.



25/15 dated 27.02.2015.

3. Prosecution case in brief is that on 28.04.2014, O.P. No. 2 Nazia Hasan filed a written complaint before the Officer-in-charge of the SC/ST/Minority Police Station, Patna, which was forwarded to the Hayaghat Police Station, alleging therein that she was married to one Aamir Karim on 12.10.2013 at Darbhanga. At the time of marriage a sum of Rs. 10,00,000/= was given for jewelry, clothes and other households items as gift. It is further alleged that the behavior of her in-laws was not good from very inception of her marriage and her jewelry were also taken by her mother-in-law on the promise to keep it in safe custody. On 03.11.2013 her husband went to Delhi leaving her at maika. On 26.02.2014 her husband send her three Talaq by email and same text was also send by SMS to Md. Nadim's (a mediator to the marriage) on mobile No. 9934239638. Therefore, she prayed that the matter may be inquired and her belongings and jewelry



and also Talaqnama may be handed over to her.

4. It is submitted by learned counsel appearing for the petitioners that both petitioners are in-laws of opposite party no. 2 and their implication is out of ulterior and oblique motive, for the reason that they are the parents of the husband of opposite party no. 2. It is submitted that the petitioners are living separately with opposite party no. 2 and her husband and was not connected with their daily and domestic affairs. It is further pointed out that the allegation qua cruelty and raising dowry demand is appearing very much general and omnibus against petitioners being in-laws, where as the thrust of allegation is available against the husband of opposite party no. 2. It is further submitted that from facial perusal of complaint, it appears that the marriage of complainant has already dissolved as per her personal law, which not appears challenged further before any court of law.

5. In view of aforesaid facts, learned counsel



appearing on behalf of the petitioners referred and relied upon the legal report of ***Abhisek Vs. State of Madhya Pradesh***, reported in ***2023 SCC OnLine SC 1083***.

6. Despite of service of notice, opposite party no. 2 failed to join the present proceedings.

7. 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 vs. State of Madhya Pradesh*** reported in ***2023 SCC Online SC 1083***, 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.”

8. In view of aforesaid factual and legal submission, as petitioners are in-laws, having facing general and omnibus allegation *qua* cruelty and demand of dowry, where from the perusal of complaint petition itself, it appears that *prima facie* marriage of opposite party no. 2 appears dissolved, as per her personal law being Muslim, accordingly, by taking a guiding notes of ***Abhishek’s case (supra)***, the impugned order dated 26.03.2015 as passed by learned Judicial Magistrate, Darbhanga, is hereby set aside and quashed *qua* petitioners with all its consequential proceedings.

9. Let copy of this order be sent to the trial court, without delay.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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