

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No.11386 of 2017**

Arising Out of PS. Case No.-175 Year-2016 Thana- NALANDA COMPLAINT CASE  
District- Nalanda

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Vikash Kumar Son of Late Bijendra Sharma, Resident of Village- Kura, P.S.-  
Ghosi, District- Jehanabad.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Dimple Kumar, Daughter of Arun Kumar, at present Village- Posanda, P.S.-  
Hilsa, District- Nalanda.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Adv.  
Mr. Mayank Raj, Adv.  
For the Opposite Party/s : Mr. Gauri Shankar Gupta

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

**Date : 26-06-2024**

Heard learned counsel appearing for the parties.

2. This is an application for quashing the order dated 16.11.2016 passed in compliant case no 175 of 2016 passed by learned Sub Divisional Judicial Magistrate, Hilsa, Nalanda where cognizance for the offence punishable under section 498(A) of Indian penal code and Section 4 of Dowry Prohibition Act, was taken against petitioner.

3. The brief fact of prosecution speaks that O.P. No. 2 instituted a complaint case in the court of learned Additional Chief Judicial Magistrate, Hilsa, Nalanda by putting the name of petitioner, his mother and uncle with



respect to occurrence said to have taken place on 30.04.2015 alleging therein interalia that she was married with the petitioner on 30.04.2015 at Sun Temple, Hilsa as per hindu rites and rituals. It is further stated that there was no exchange of dowry in that marriage and after completion of rituals couple approached the Notary Public on 21.05.2015, whereby they sworn an affidavit regarding solemnization of marriage. On that basis Notary Public issued certificate regarding marriage. It is further stated that after 21 days of marriage affidavit was sworn with the statement that couple were living a happy conjugal life. It is further stated that O.P. No. 2 went to her in-laws house and they stayed there up to the date of notarized affidavit and thereafter she returned to her parental home. It is alleged that on the request of second marriage by the parents of O.P. No. 2 all the named accused person demanded a motorcycle in dowry from her parents and when they showed their inability then O.P. No. 2 was abused and assaulted and threatened that unless and until



the demand of motorcycle had not been fulfilled she will not be kept in her matrimonial home. O.P. No. 2 was blessed with a daughter on 11.12.2015 and all the accused came to see the new born but still at that time she was tortured for dowry. It is further alleged that petitioner got married and has two children and by concealing the fact of earlier marriage he got married with O.P. No. 2 and started torturing her for dowry. It is further alleged that all the accused persons came at the parental home of O.P. No. 2 on 10.03.2016 and tried to take away the child and in that course took away the jewelry gifted by the parents of O.P. No. 2 amounting Rs. 1 Lacs which was kept at the rack of the room, which were a golden chain weighing 1.5 *bhars*, earring  $\frac{1}{2}$  *bhar*, nose ring, *dholna* and *mangalsutra* weighing 1.5 *bhars*, and 16 *bhars* of silver which after taking in a suitcase, taken away by the accused. However, she succeeded in keeping the new born child with her and further she was threatened that they( accused persons) would not take her, in matrimonial home unless and until



dowry demand will not fulfilled and if she attempted to go then she would be killed. It is also stated that O.P. No. 2 approached the local police but they advised to file the case in the court and thereafter complaint case has been filed.

4. It is submitted by Mr. Ramakant Sharma, learned senior counsel appearing on behalf of the petitioner that admittedly in terms of the complaint petition marriage of O.P. No. 2 with petitioner was solemnized by subsisting his first marriage without getting it dissolved from the court of law during the lifetime of his first wife and as such the marriage of the complainant with petitioner is *void ab initio* and in view of same she cannot be said to be a legally wedded wife as to attract allegations under Section 498(A) of the I.P.C.

5. It is submitted by the learned senior counsel that as per complainant/O.P. No. 2, she solemnized her marriage again with one Mr. Manoranjan Sharma, son of Mr. Dinesh Sharma , resident of village- Nowaba toli



Salarpur, P.S.- Sakurabad, district-Jehanabad, only when the grievances as raised through present complaint petition was settled between the parties. It is submitted that in view of the the same the continuing process before the learned trial court is only amount to abusing the process of court of law and as such the impugned order/cognizance must be set aside.

6. In support of aforesaid submissions, learned counsel relied upon legal reports of Hon'ble Supreme Court in the matter of ***Abhishek vs. State of Madhya Pradesh*** as reported in ***2023 SCC OnLine SC 1083***.

7. Notice validly served upon Opposite Party No. 2, but failed to join proceedings.

8. Learned APP for the State opposed the prayer for quashing petition.

9. In view of the aforesaid factual and legal submission as subsequent to filing the present complaint the complainant/O.P. No. 2 solemnized her marriage in terms of annexure-P/3 of supplementary affidavit pressed



on behalf of petitioner, continuing with aforesaid proceedings before the learned trial court would only amount to abuse of process of law hence, by taking guiding note of **Abhishek case (supra)**, the order of cognizance dated 16.11.2016 with all its consequential proceedings, *qua*, above named petitioner, arising thereof as passed in connection with Complaint Case No. 175(c) of 2016 pending before the learned Sub-Divisional Judicial Magistrate, Hilsa, Nalanda, is hereby quashed and set aside.

10. Hence, this application stands allowed.
11. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

Sudha/-

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| AFR/NAFR          | NAFR       |
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