

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44455 of 2015

Arising Out of PS. Case No.-49 Year-2014 Thana- SONBERSA District- Sitamarhi

Vijita Mishra @ Vijita Kumari, wife of Praveen Mishra, resident of Village-
Singhwahini Jankinagar, P.S.-Sonbarsa, District-Sitamarhi.

... .. Petitioner

Versus

1. The State of Bihar
2. Arti Devi @ Arti Mishra, Daughter of Ugrakant Jha, Resident of Malargawa,
Ward No. 08, P.S.- Malargawa, District-Sarlahi (Nepal).

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Bimlesh Kumar Pandey, Advocate

For the Opposite Party/s : Mr. Satyendra Narayan Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 06-05-2024

Heard learned counsel for the petitioner and
learned APP for the State.

2. The present application has been filed by the
petitioner for quashing of the order taking cognizance dated
28.07.2015 passed by the learned S.D.J.M Sadar, Sitamarhi
in Tr. No.3671 of 2015 (arising out of Sonbarsa P.S. Case
No.49 of 2014) whereby the learned jurisdictional Magistrate
has taken cognizance for the offences punishable under
Section 498-A of the Indian Penal Code (for short 'IPC') and
Sections 3 and 4 of the Dowry Prohibition Act against the



petitioner.

3. The prosecution case, inter alia, as alleged in the complaint petition by the complainant/opposite party No.2 is that the informant lived at Kathamandu, where co-accused namely, Praveen Mishra was working with Nepali News Channel, who took the informant/O.P. No.2 in confidence and developed intimacy with her. He told informant this his wife (petitioner) has died. Later on, he developed love affairs with the informant/O.P. No.2 and performed marriage with her on 26.04.2012 in temple in Nepal. The informant came to her *Sasural* and lived there happily for one year. She learnt in her *Sasural* that first wife of Praveen Mishra is alive. One daughter was born to the informant after marriage with the Praveen Kumar on 07.04.2013. The father of the informant spent about Rs. 50,000/- in the *Chhathi* of daughter of the informant. It was alleged that accused, namely, Geeta Devi passed comments on the informant that Praveen has performed marriage with the informant, who is not suited for him. Thereafter, the informant's husband started giving pressure to the informant



to bring Rs. 4 lacs from her father to purchase flat at Kathamandu. The informant gave Rs. 2 lacs to the accused persons, but her husband continued to make pressure for payment of further Rs 2 Lacs. The informant showed her inability after realizing the financial condition of her father. Then, other co-accused persons sold all the jewellery of the informant and also advanced threat of dire consequences. The co-accused Praveen Mishra gave threat to the informant that he will remove all the proofs of the marriage and will ruin the future of the informant. The other accused persons also helped the husband of petitioner in committing torture to the informant. On 27.04.2014, all the accused persons abused and assaulted the informant pressed her neck with scarf (GAMCHA) but, she anyhow succeed to saved herself by neighbourers but, was ousted with her daughter.

4. With the aforesaid allegation, a complaint case was filed before the learned Chief Judicial Magistrate, Sitamarhi bearing Complaint Case No.765(c)/2014, which was referred to concerned police station for lodging the FIR and for investigation by exercising the power conferred



under Section 156(3) of the Code of Criminal Procedure (for short 'Cr.P.C.'). Subsequent to which, the police registered Sonbarsa P.S. Case No.49 of 2014 dated 15.05.2014, where after the investigation, the police submitted charge-sheet against the petitioner. The learned Jurisdictional Magistrate after perusal of the materials collected during investigation, took cognizance vide order dated 28.07.2015 for the offences punishable under Section 498-A of the IPC and Sections 3 and 4 of the Dowry Prohibition Act.

5. It is submitted by learned counsel appearing for the petitioner that petitioner is the first wife of husband of opposite party no.2, where the entire thrust of allegation is available against the husband of opposite party no.2 i.e. Pravin Kumar Mishra with whom she alleged to solemnize her marriage, where she came to know later on that Pravin Kumar Mishra had already married with petitioner. It is further submitted that the implication of petitioner only being the wife of co-accused Pravin Kumar Mishra. The nature of allegation is also appearing very much general and omnibus against the petitioner and it also appears very ornamental in



nature as to aggravate the allegation. It is further submitted that the present complaint, which was filed before the learned Chief Judicial Magistrate is not supported by affidavit, which is against the settled legal ratio laid down in case of **Priyanka Srivastava vs. State of U.P.** reported in **[(2015) 6 SCC 287]**.

6. It is also submitted by learned counsel that the provisions of Section 153 of the CrPC also appears not to be followed in present case while lodging before the complaint case.

7. While concluding argument, learned counsel appearing on behalf of petitioner also relied upon the legal report of Hon'ble Supreme Court as passed in case of **Abhishek vs. State of Madhya Pradesh [2023 SCC OnLine SC 1083]**.

8. Learned counsel appearing for opposite party no.2 has failed to join the present proceedings.

9. It would be apposite to reproduce para-13-17 of the legal report of Hon'ble Supreme Court passed in the matter of **Abhishek case** (supra), which runs 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.”

10. In view of aforesaid factual and legal submissions, as implication of petitioner only appears *prima facie* being wife of one Praveen Kumar Mishra against whom the thrust of allegation is available as to solemnize the marriage with opposite party no.2 by concealing his earlier



marriage with the petitioner and also by taking a guiding note from **Abhishek case** (supra), the order taking cognizance dated 28.07.2015 passed by the learned S.D.J.M Sadar, Sitamarhi in Tr. No.3671 of 2015 (arising out of Sonbarsa P.S. Case No.49 of 2014) with all its consequential proceedings *qua* petitioner is, hereby, quashed and set aside.

11. The application stands allowed.

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

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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