

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28867 of 2017

Arising Out of PS. Case No.-42 Year-2015 Thana- TARAPUR District- Munger

Pushpa Kumari, w/o Sanjay Kumar, resident of Mohalla-Modi Nagar (House of Meena Mehtam), P.S.-Babar Chak, District-Bhagalpur.

At present residing at Mohalla-East Golhatta Road, Sikanpur, P.S.-Mojahidpur, District-Bhagalpur.

... .. Petitioner

Versus

1. The State of Bihar

2. Tanupriya Kumar @ Ruby, D/o Devendra Prasad Sah, resident of village-Abjuganj, P.S.-Sultanganj, District-Bhagalpur.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar Jha, Advocate Mr. Rana Pratap Singh, Advocate Mr. Vikas Kumar, Advocate
For the Opposite Party/s :		Mr. Nityanand Tiwary, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 27-06-2024

Heard learned counsel appearing on behalf of the petitioner and learned APP appearing on behalf of the State.

2. The present application has been filed by the petitioner for quashing of the order taking cognizance dated 04.12.2015 passed by the learned S.D.J.M. Munger in G.R. No.707 of 2015 arising out of Tarapur P.S. Case No.42 of 2015, whereby the learned jurisdictional Magistrate has taken cognizance for the offences punishable under Sections 498-A of the Indian Penal Code (for short 'IPC') and Sections 3 and 4 of the Dowry Prohibition Act against the



petitioner and three other co-accused persons.

3. The prosecution case, in brief, according to the written report of the informant, namely, Tanupriya Kumari @ Ruby is that she was married on 04.02.2013 with one Anil Kumar, son of Late Sitaram Sah. Her maternal father-in-law took the informant to Delhi at the house of her husband and for few days, husband of the informant well behaved with her. It is further alleged that about after 20 days, her husband told her to bring Rs.10 lakhs from *maike* and on refusal, husband of the informant started assaulting her. Her mother-in-law, namely, Shanti Devi and her *dewar* (brother-in-law), namely, Pradip Kumar also tortured her. The informant some how came to her *maike* at brother's house. It is further alleged that her husband talk with her on phone and ask her to come Delhi, upon which, she again went to Delhi in September, 2013. After some time, her husband, Dewar and mother-in-law again started cruelty upon her. After the period of 13 days, she again came to her *maike*. It is further alleged that on 03.04.2015, her *nanad* Pushpa Kumari (petitioner) called her to her house



and informant went there, where her *nanad* told that you do as her brother is saying and if money is not paid, then you are not liable to live in the house. She further alleged that on 19.04.2015, the grand-mother of her husband called her from her *sasural* to attend a marriage. On 20.04.2015, when informant reached her *sasural* at 3:00 P.M., her husband again started assaulting her and her mother-in-law and *dewar* provoked him to assault her. Her husband caught her hair to get her fell down to the stair and thereafter, all three were assaulted her. She gave information regarding occurrence to her brother over phone, then her brother Sunil Kumar and sister Bandana Kumari came on tempo and took her with them. She further alleged that on instigation of petitioner, namely, Pushpa Kumari, the occurrence of assault committed by her husband, *dewar* and mother-in-law.

4. It is submitted by learned counsel appearing for petitioner that petitioner is the married sister of the husband of opposite party no.2. It is pointed out that she was living with her husband in different village even prior to



12 years of marriage of opposite party no.2 with brother of the petitioner. It is submitted that as petitioner is living separately, having no connection with daily and domestic affairs of opposite party no.2 and with her husband. It is submitted that the allegation is appearing very much general and omnibus against this petitioner and her implication appears out of ulterior and oblique motive only being relative of her husband. It is further submitted that thrust of allegation as it appears from the perusal of FIR is available against husband of opposite party no.2.

5. In support of his submission, as referred above, learned counsel appearing for petitioner relied upon the 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**.

6. It appears that despite of service of notice, opposite party no.2 has failed to join the present court proceeding.

7. It would be apposite to reproduce the legal report of Hon'ble Supreme Court as passed in the matter of



Abhishekh case (supra) as under:-

“12. The contours of the power to quash criminal proceedings under Section 482 Cr. P.C. are well defined. In *V. Ravi Kumar v. State represented by Inspector of Police, District Crime Branch, Salem, Tamil Nadu* [(2019) 14 SCC 568], this Court affirmed that where an accused seeks quashing of the FIR, invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint. In *Neeharika Infrastructure (P). Ltd. v. State of Maharashtra* [Criminal Appeal No. 330 of 2021, decided on 13.04.2021], a 3-Judge Bench of this Court elaborately considered the scope and extent of the power under Section 482 Cr. P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare cases, such standard not being confused with the norm formulated in the context of the death penalty. It was further observed that while examining the FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, and more particularly, the



parameters laid down by this Court in R.P. Kapur v. State of Punjab (AIR 1960 SC 866) and State of Haryana v. Bhajan Lal [(1992) Supp (1) SCC 335], the Court would have jurisdiction to quash the FIR/complaint.

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 Bhajan Lal (supra), 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 submissions and by taking note of fact that the petitioner is a married sister-in-law, who is living separately, facing general and omnibus allegation *qua* cruelty and raising



demand of dowry and also further by taking guiding note of **Abhishek case** (supra), the order taking cognizance dated 04.12.2015 passed by the learned S.D.J.M. Munger in G.R. No.707 of 2015 arising out of Tarapur P.S. Case No.42 of 2015 with all its consequential proceedings *qua* petitioner is, hereby, quashed and set aside.

9. The application stands allowed.

10. Let a copy of the judgment be sent to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.06.2024
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