

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35682 of 2016

Arising Out of PS. Case No.-836 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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Shashi Bhushan @ Chhotan, son of Sri Badri Narayan Ram, resident of
village – Kulhariya, P.S. - Koilwar, District – Bhojpur.

... .. Petitioner

Versus

1. The State of Bihar
2. Babita Devi, D/o Sri Bijay Ram, wife of Durga Prakash, presently
resident of village – Kulhariya, P.S. - Koilwar, District – Bhojpur. Other
address – Village-Bayapur, P.S. - Maner, District – Patna.

... .. Opposite Parties

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Appearance :

For the Petitioner/s : Mr.Surj Bansh Roy, Advocate
For the Opposite Party/s : Mr.Pramod Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 04-04-2024

Heard learned counsel for the petitioner and
learned A.P.P. for the State.

2. This application has been filed for quashing the
order dated 25.08.2015 passed by learned Sub-Divisional
Judicial Magistrate, Danapur in Complaint Case No.
836(C)/2015 registered under Section 498-A of the Indian
Penal Code and Section 3/4 of the Dowry Prohibition Act.

3. The brief facts of the case is that the marriage
of the complainant was solemnized with the co-accused
namely, Durga Prakash on 25.04.2012 and at the time of
marriage, her father had given clothes, utensils, gold and
cash etc. worth Rs. 3,95,000/- to him and his family



members. The complainant further alleged that after her marriage, petitioner (Dewar) alongwith all the co-accused persons started torturing her mentally as well as physically and further demanded Rs. One Lakh as dowry. The complainant further states that her parents and relatives tried to pacify the matter and shows their inability to fulfill their demand of Rs. One Lakh, at this stage, her husband and petitioner abused them and ousted them from the house. The complainant states that after some days, all the accused persons denied to keep her in matrimonial home. After few days, when the complainant alongwith her brother reached at her *sasural*, her husband and the petitioner again abused them and started fighting with her brother as also snatched her child and ousted them from the house.

4. Learned counsel for the petitioner submitted that the petitioner is the brother-in-law (*Dewar*) of the complainant. Learned counsel submits that there is general and omnibus allegation against the petitioner. Learned counsel further submitted that petitioner is living separately much prior to the occurrence with opposite party no. 2 and her husband and, as such, there is no occasion to remain connected with their daily and domestic affairs. It is submitted that out of relation, petitioner falsely implicated in the present case due to ulterior and oblique motive. Learned counsel has relied upon the legal report of Hon'ble Supreme Court in the matter of **Abhishek vs. State of**



Madhya Pradesh reported in **2023 SCC Online SC 1083**.

5. Despite service of notice, opposite party no.2 has failed to join the present proceeding.

6. It would be apposite to reproduce para-13, 14, 15, 16 & 17 of the legal report of Hon'ble Supreme Court in the case of **Abhishek** (supra), which reads 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 the aforesaid factual and legal submissions, as the petitioner is the brother-in-law (Dewar) of the complainant/opposite party no. 2, who is facing general and omnibus allegation regarding cruelty as alleged to be committed upon opposite party no. 2 and further by taking note of the guiding note of the legal report of Hon’ble Apex Court, as reported through **Abhishek** (supra), the impugned order dated 25.08.2015 passed by learned Sub-Divisional Judicial Magistrate, Danapur in



Complaint Case No. 836(C)/2015 is set-aside and quashed, accordingly.

8. This application is allowed.

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

(Chandra Shekhar Jha, J)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
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