

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19294 of 2016

Arising Out of PS. Case No.-4 Year-2010 Thana- KHAJEKALA District- Patna

Md. Rafique son of Md. Hamid resident of Mohalla- Kashmi Bagh, Faujdari Kuan, P.S.- Khajekalan, P.O.- Jhauganj, District- Patna.

... .. Petitioner/s

Versus

1. State of Bihar and Anr
2. Shahina Parween D/o Md. Shamshuddin Resident of Mohalla- Mogalpura, Durukhi, Faujdarikuan, P.S.- Khajekalan, District- Patna.

... .. Opposite Party/s

with
CRIMINAL MISCELLANEOUS No. 41733 of 2017

Arising Out of PS. Case No.-4 Year-2010 Thana- KHAJEKALA District- Patna

1. Md. Jawed
2. Md. Banti
3. Md. Jahid All sons of Md. Rafique
4. Zarina Khatoon W/o Md. Rafique All R/o Mohalla - Kashmi Bagh, Faujdari Kuan, P.S. Khajekalan, District - Patna.

... .. Petitioner/s

Versus

1. State of Bihar
2. Sahina Parween D/o Md. Shamsuddin R/o Mohalla - Mogalpura, Durukhi Faujdari Kuan, P.S. Khajekalan, District - Patna.

... .. Opposite Party/s

Appearance :
(In CRIMINAL MISCELLANEOUS No. 19294 of 2016)
For the Petitioner/s : Mr.Dr. Mahtab Ahmad, Advocate
For the Opposite Party/s : Mr.Raj Ballabh Singh App
(In CRIMINAL MISCELLANEOUS No. 41733 of 2017)
For the Petitioner/s : Mr. Dilip Kumar No. 1, Advocate
For the Opposite Party/s : Mr. Surendra Kumar, Advocate
For the State : Mrs. Veena Kumari Jaiswal, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 09-04-2024



CR. MISC. No. 19294 of 2016

1. The present application preferred for quashing the order dated 8.12.2010 passed by learned S.D.J.M. Patna City in which the learned Court has taken cognizance and also framed the charge against the petitioner and his family members in connection with Khajekalan P.S. Case No 04/2010 and for quashing of cognizance order dated 08.12.2010 and of framing charge dated 24.09.2013, passed by the learned S.D.J.M., Patna City in connection of F.I.R. which has been registered as Khajekalan P.S. Case No.04/2010 registered under section 498 A of the Indian Penal Code and $\frac{1}{2}$ of Dowry Prohibition Act.

2. The prosecution case in short is that opposite party no.2 married with one Md. Shahid (son of the petitioner) on 31.12.2007 and at the time of marriage Rs. One lakh and ten thousand rupees has been given to the petitioner, thereafter only she went to her matrimonial home. After one month of conjugal life her husband (Md. Shahid) left her at parental home and



said that he is going to Saudi Arabia for earning money and when he will return back then he will take her to his house. When Md. Shahid returned back after 1 ½ years he did not come to take her for matrimonial home, then she went on her own and stayed there 2-4 days, where her husband, father-in-law, brother-in-law abused her and demanded Rs. 1 lakh and a motor cycle as dowry and when she tried to pacify them then her mother-in-law said to her husband to kill her if she did not bring money from her parents and all have assaulted her also.

3. In the background of aforesaid factual allegation, Khagekalan P.S. Case No. 04 of 2010 was registered by police, where after investigation charge-sheet was submitted for the offence under Section 498 A of the Indian Penal Code and 3/4 of Dowry Prohibition Act, where learned Magistrate took cognizance for the aforesaid offences through impugned order and framed charges accordingly.

4. Learned counsel appearing for the



petitioner submitted that petitioner is father-in-law of opposite party no. 2, facing very much general and omnibus allegation. It is pointed out that implication of petitioner is out of relation only just with ulterior and oblique motive and as such his prosecution is nothing but a malicious prosecution which to be out rightly quashed and set aside. While travelling over the argument, learned counsel submitted that the main thrust of allegation is available against the husband, who is also co-accused of this case namely, Md. Shahid but interestingly O.P. No. 2 compromised this matter with her husband and living separately with him in a rented house, said compromise petition is available as Annexure-V of present petition. It is pointed out that just for harassing attitude the present proceeding is pending against petitioner, which is evident from compromise petition itself, otherwise having no occasion to proceed further, where matter appears compromised with husband.



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

6. Although, Opposite Party No. 2 was represented by learned Advocate but on repeated calls no one turned up.

7. Learned APP while opposing the application submitted that as per FIR, the allegation of cruelty is also available against petitioner.

8. It would be apposite to reproduce relevant Paragraph Nos. 12, 13, 14 ,5, 16 & 17 of **Abhishek Case (supra)**, which read as:-

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 informant 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 persons 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 concerned Act (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 concerned Act, 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."

9. In view of aforesaid legal and factual submissions, it appears that matter has been compromised between opposite party no. 2 and her



husband, namely, Md. Shahid as per Annexure-V of this petition from where, it also appears that they are living separately not with petitioner, in a rented house and moreover, the petitioner is father-in-law, having very much general and omnibus allegation towards cruelty as per face of FIR.

10. In view of aforesaid factual background and by taking guiding note of **Abhishek case (supra)**, impugned order of taking cognizance dated 08.12.2010 and framing of charge dated 24.09.2013 with all its consequential proceedings, *qua*, petitioner arising thereof, as passed in connection with Khajekalan P.S. Case No. 04/2010, G.R. No. 71/2010 pending before learned S.D.J.M., Patna City, is hereby quashed and set aside.

11. Hence, this application stands allowed.

12. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.



CR. MISC. No. 41733 of 2017

1. The present application preferred for quashing the order dated 24.09.2013 passed by learned S.D.J.M., Patna City in connection with Khajekalan P.S. Case No.04/2010, G.R. No.71/2010 by which charges has been framed against the petitioners for offence u/s 498 A of the Indian Penal Code and $\frac{3}{4}$ of the Dowry Prohibition Act.

2. The prosecution case in brief is as follows:

(i) That it is alleged by the informant that she was married with one Md. Shahid on 31.12.2007 and at the time of marriage rupees one lakh and ten thousands was given, whereafter only she went to her Sasural (matrimonial house), her husband left her at parental home after one month by saying that he was going to Saudi Arabia for work and when he will come back, he will take her to his house.

(ii) That, it is further alleged that after one and half years, her husband when came back from Saudi



Arabia, did not come to take her, then she went to her husband on her own and lived there for two-four days, where accused persons made demand of Rs. 2 Lakhs and a Motorcycle and on her refusal they threatened to kill her.

3. In the background of aforesaid factual allegation, Khagekalan P.S. Case No. 04 of 2010 was registered by police, where after investigation charge-sheet was submitted for the offence under Section 498 A of the Indian Penal Code and $\frac{3}{4}$ of Dowry Prohibition Act, where learned Magistrate took cognizance for the aforesaid offences through impugned order.

4. Learned counsel appearing for the petitioners submitted that all petitioners are in-laws facing very much general and omnibus allegation. It is pointed out that implication of petitioners are out of relations only just with ulterior and oblique motive and as such their prosecution is nothing but a malicious prosecution which to be out rightly quashed and set



aside. While travelling over the argument, learned counsel submitted that the thrust of allegation is available against the husband who is also co-accused of this case namely, Md. Shahid but interestingly O.P. No. 2, compromised this matter with her husband and living separately with him in a rented house, said compromise petition is available as Annexure-V of present petition. It is pointed out that just for harassing attitude the present proceeding is pending against petitioners, which is evident from compromise petition itself, otherwise having no occasion to proceed further, particularly when matter appears compromised with husband.

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

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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.

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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.

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complainant resided, would add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection.

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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.

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9. In view of aforesaid legal and factual submissions, it appears that matter has been compromised between opposite party no. 2 and her husband, namely, Md. Shahid, from where it appears that they are living separately in a rented house and moreover, the petitioners are in-laws, having very much general and omnibus allegation towards cruelty as per face of FIR.

10. In view of aforesaid factual background



of compromise and by taking guiding note of **Abhishek case (supra)**, impugned order of cognizance and also framing of charge dated 24.09.2013 with all its consequential proceedings, *qua*, all above named petitioners arising thereof, as passed in connection with Khajekalan P.S. Case No. 04/2010, G.R. No. 71/2010 pending before learned S.D.J.M., Patna City, is hereby quashed and set aside.

11. Hence, this application stands allowed.

12. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	NAFR
CAV DATE	NA
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