

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38711 of 2017**

Arising Out of PS. Case No.-49 Year-2009 Thana- BETTIAH CITY District- West
Champaran

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1. Manoj Prasad S/o Saty Narain Prasad,
 2. Savitri Devi, W/o Satya Narain Prasad,
 3. Ravi Kumar, S/o Jagannath Prasad, All resident of Henary Bazar, Nakchhed Tola, P.S.- Motihari Town, Dist- East Champaran.

... .. Petitioner/s

Versus

1. State of Bihar
2. Sunita Devi, D/o Late Kanhiya Lal Prasad Gupta, of Vill- Goldarpatti, Ganj No.2, Bettiah, P.S.- Bettiah, Dist- West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sangeet Deokuliar, Advocate
For the Opposite Party/s : Mr. Rajkishore Singh, APP

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

Date : 27-06-2024

Heard learned counsel for the petitioners and

learned counsel for the respondents.

2. The present quashing petition has been preferred to quash the order dated 04.05.2017 passed in Cr. Rev. No. 206 of 2016 in Trial No. 409 of 2016 by learned 3rd Additional Sessions Judge, West Champaran, Bettiah and also against order dated 30.05.2016 passed in Bettiah Town P.S. Case No. 49 of 2009, where learned Sub-Divisional Judicial Magistrate, Bettiah took



cognizance for the offence punishable under Sections 498 A, 323, 406 and 504/34 of the Indian Penal Code (in short IPC) and Section 3/4 of the Dowry Prohibition Act against the petitioners.

3. Despite proper service of notice, opposite party no. 2, failed to join the present proceedings.

4. From the crux of complaint petition it appears that on 05.03.2009 at about 2 PM O.P. No. 2 lodged a case with Bettiah Town Police Station stating that she was married on 14.05.2004. She states that she was kept well at matrimonial house for about two months and after that accused persons pressurised her for demanding Rs. 50,000/- from her father and on her denial she was tortured. She further states that about a year ago she was ousted from her matrimonial house and accused persons threatened that they will get re-married her husband.

5. Learned counsel appearing for the petitioners submitted that from the perusal of FIR, no



prima facie case is made out against petitioners for the reason as petitioners are elder brother-in-law, mother-in-law and *bhagina* (nephew) of the husband of the complainant. It is further submitted that petitioners are living separately and having no connection with their daily and domestic affairs. It is submitted that their implication appears only out of being close relative with ulterior and oblique motive, suggesting only harassing attitude. It is a classical case of malicious prosecution and misuse of provisions of Section 498-A of Indian Penal Code. While concluding the argument, it is submitted that even from the perusal of complaint petition, the allegation *qua* petitioners are appearing very much general and omnibus.

6. 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**.



7. Learned APP appearing on behalf of State, opposes the application.

8. It would be apposite to reproduce relevant Paragraph Nos. 12, 13, 14, 15, 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 as petitioners appear elder brother-in-law, mother-in-law and *bhagina* living separately, having no connection with daily and domestic affairs of O.P. No.2 and her husband, where allegation of cruelty and demand of dowry are also appearing very much general and omnibus against them.

10. Accordingly, in view of aforesaid factual



backgrounds and by taking guiding note of **Abhishek case (supra)**, order of cognizance dated 04.05.2017 with all its consequential proceedings, *qua*, all above named petitioners arising thereof as passed in connection with passed in Cr. Rev. No. 206 of 2016 in Trial No. 409 of 2016 by learned 3rd Additional Sessions Judge, West Champaran, Bettiah filed against order dated 30.05.2016 passed in Bettiah Town P.S. Case No. 49 of 2009, where learned Sub-Divisional Judicial Magistrate, Bettiah 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.)

S.Tripathi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.06.2024
Transmission Date	29.06.2024

