

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44899 of 2016

Arising Out of PS. Case No.-529 Year-2014 Thana- MOTIHARI TOWN District- East
Champaran

=====

Aditya Kumar @ Aaditya Kumar, S/o Deep Narayan Mishra, resident of
House No. 232, Amar Chhatauni, P.S.- Chhatauni, Dist- East Champaran.

... .. Petitioner

Versus

1. The State of Bihar
2. Richha Bhardwaj, D/o Sri Niwas Pathak, W/o Ditya Kumar, residing at
Muhalla- Telia, P.S.- Motihari Town, Dist- East Champaran.

... .. Opposite Parties

=====

Appearance :

For the Petitioner/s : Mr. Sunil Kumar Mishra, Advocate
For the Opposite Party/s : Mr. Pradeep Narain Kumar, APP

=====

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 24-06-2024

Heard learned counsel for the petitioner and
learned APP for the State duly assisted by learned counsel
appearing for opposite party no.2.

2. The present application has been filed by the
petitioner for quashing of Motihari P.S. Case No.529 of 2014
pending in the court of learned S.D.J.M. Motihari registered
for the offence under Sections 498-A read with 34 of the
Indian Penal Code (for short 'IPC') and Section 3 and 4 of
the Dowry Prohibition Act.

3. The prosecution case, in brief, as per written



report of the informant/opposite party no.2 is that her marriage was solemnized on 23.11.2006 with petitioner, namely, Aditya Kumar, son of Sri Deep Narayan Mishra. After the marriage, she was tortured and assaulted for demand of Rs.25 lakhs for opening his own company. When the informant shown her inability to fulfil the same, the accused-petitioner went to Faridabad and returned after five months and brought the informant to Faridabad along with him. The informant joined a job in Hospital and enjoyed the conjugal life with her husband happily. The informant further alleged that the petitioner-husband still continued his demand of Rs.25 lakhs and after sometimes assaulted her informant/wife/opposite party no.2 physically. She further alleged in her written report that once she was noticed that her husband used to talk with one lady Elizabeth Arics Swami periodically, the informant suspects that she has some illicit relation with her husband and while she objected for the same, she was beaten brutally. Even, the informant suspects that the petitioner has married with that lady.

4. It is submitted by learned counsel that the



marriage between the parties has been dissolved by way of divorce in terms of order dated 30.01.2024 as passed by the learned Principal Judge, Family Court, East Champaran, Motihari in Matrimonial Case No.121 of 2018. It is further submitted that the opposite party no.2 was unemployed before the marriage as of petitioner but, subsequently, she got employment as doctor and, therefore, she refused to accept the maintenance amount in terms of maintenance order as passed by the learned Principal Judge, Family Court through Maintenance Case No.280 of 2014 vide order dated 17.02.2020. It is further pointed out that the dispute between the parties has been amicably settled and they are living separately since last eight years. Learned counsel for the petitioner submitted that the divorce of decree was passed on the ground of desertion by the informant/opposite party no.2, where opposite party no.2 did not file any appeal till date, as she was also desirous to dissolve marriage with petitioner as per her statement and, as such, the aforesaid order attains finality. Learned counsel for the petitioner relied upon the legal report of Hon'ble Supreme Court as



passed in the case of **Abhishek vs. State of Madhya Pradesh [2023 SCC OnLine Sc 1083]**.

5. Learned counsel appearing for opposite party no.2 while arguing this matter affirm the dissolution of marriage by way of divorce and also of the fact that parties are living separately since last couple of years, as submitted by learned counsel for the petitioner.

6. 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."

7. In view of aforesaid factual and legal submissions, as the marriage between the parties has already been dissolved by way of divorce on the ground of desertion caused by opposite party no.2, who also desirous to dissolve marriage with petitioner, where out of employment, opposite party no.2 has refused to accept



maintenance for the present hence, continuing with the proceeding before learned trial court appears only to abuse the process of court of law. Accordingly, by taking guiding note of **Abhishek Case** (supra), FIR of Motihari P.S. Case No.529 of 2014 with all its consequential proceedings *qua* petitioner pending before the learned S.D.J.M. Motihari is, hereby, quashed and set aside.

9. Accordingly, this 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	26.06.2024
Transmission Date	26.06.2024

