

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44517 of 2015**

Arising Out of PS. Case No.-25 Year-2014 Thana- MAHILA P.S. District- Kaimur (Bhabua)

Nishit @ Nishit Mishra, Son of Late S.K. Mishra, Resident of Gajadharganj,
Matrichhaya Collectorate, P.S. - Moddtown, Buxar

... .. Petitioner

Versus

1. The State of Bihar
2. Neha Kumar @ Neha Mishra, Wife of Nishit Mishra, Daughter of Onkar Das Resident of Mohalla+P.S. +Dist.-Bhabhua

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Manoj Kumar, Advocate
For the State	:	Mr. Navin Kumar Pandey, APP
For the Opposite Party No.2:		Mr. Ajay Kumar Jain, Advocate

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

Date : 08-05-2024

I.A. No.1 of 2024

The present interlocutory application has been filed by the petitioner for seeking amendment in the prayer portion due to subsequent development having been taken place during pendency of present case, which is as under:-

“For quashing the entire prosecution in connection with Bhabhua P.S. Case No.25 of 2014 registered for the offences punishable under Sections 498-A, 313 read with 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act.”

2. Initially, the present quashing petition was filed



with a prayer to quash the order through which anticipatory bail granted to the petitioner was cancelled by learned Trial Court vide order dated 12.02.2015 as passed in B.P. No.960A of 2014/1387 of 2014. In the meantime, the matter stood compromised between the parties and, therefore, the petitioner has filed the present interlocutory application as to amend the prayer beside the prayer made through main petition as to quash the entire proceeding.

3. Prayer of accused-petitioner be read accordingly.

4. The petition for aforesaid reason and the reasons stated in petition itself, stands allowed and disposed of.

Cr. Misc. No.44517 of 2015

The present application has been filed by the petitioner against the order dated 23.07.2015 passed in Cri. Miscellaneous Case No.11 of 2015 by the court of learned Sessions Judge, Kaimur at Bhabua whereby the anticipatory bail granted to the petitioner vide order dated 12.02.2015 passed in B.P. No.960A of 2014/1387 of 2014 was



cancelled as well as for quashing the entire prosecution in connection with Bhabhua P.S. Case No.25 of 2014 registered for the offences punishable under Sections 498-A, 313 read with 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act.

2. The prosecution case, in brief, is that the marriage of petitioner was solemnized with opposite party no.2 on 30.11.2013, whereafter the petitioner along with co-accused persons started torturing the opposite party no.2 for demand of dowry as raised for Rs.5 lakhs despite the fact that at the time of marriage, by way of gift, including household articles worth of Rs. 8,20,000/- was given by the father of opposite party no.2 and in continuation thereof, petitioner started threatening to give divorce to the opposite party no.2 on the ground of bad character. It is further alleged that opposite party no.2 was forcibly taken to Delhi while she was pregnant and got her pregnancy terminated. They also forcibly took signature of opposite party no.2 on blank papers and a video recording was done. The opposite party no.,2 was asked to leave her matrimonial house and when



she refused to do so, then the opposite party no.2 left Bhabhua.

3. In the background of aforesaid factual allegation, a formal FIR was lodged as Bhabhua Mahila P.S. Case No.25 of 2014 for the offences punishable under Sections 498-A, 313 read with 34 of the Indian Penal Code (for short 'IPC') and Sections 3 and 4 of the Dowry Prohibition Act.

4. The police after the investigation, submitted charge-sheet accordingly, where the learned Jurisdictional Magistrate has taken cognizance for the offences punishable under Sections 498-A, 313/34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act.

5. It is submitted by learned counsel for the petitioner that petitioner is the husband of opposite party no.2 and now as this matter stood compromised between the parties, where a permanent alimony of Rs. 7.5 Lakhs was paid to the opposite party no.2 by the petitioner. It is further submitted that the marriage also stands dissolved between the parties by way of mutual consent and, therefore,



continuing with proceedings before learned Trial Court would only amount to abuse of the process of Court. In support of his submission, learned counsel has relied upon the legal report of Hon'ble Supreme Court as passed in case of **Abhishek vs. State of Madhya Pradesh [2023 SCC OnLine SC 1083]**.

6. Heard Mr. Navin Kumar Pandey, learned APP appearing on behalf of the State.

7. Mr. Ajay Kumar Jain, learned counsel appearing on behalf of opposite party no.2 while opposing the application affirmed the factum of compromise between the parties and also to receive the permanent alimony of Rs.7.5 Lakhs. It is also conceded by learned counsel for opposite party no.2 that the marriage between the parties now dissolved under mutual consent.

8. It would be apposite to reproduce para-13-17 of the legal report of Hon'ble Supreme Court as 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."

9. In view of aforesaid factual and legal submissions, as marriage now dissolved between the parties under mutual consent, where opposite party no.2 also received permanent alimony and, therefore, continuing with proceedings further before the learned Trial Court would only amount to abuse of the process of law, accordingly, by taking note of **Abhishek case** (supra), the impugned order of cognizance dated 16.03.2015 passed by learned



jurisdictional Magistrate, Kaimur at Bhabhua in connection with Bbahua Mahila P.S. Case No.25 of 2014 along with all its consequential proceedings *qua* petitioner is hereby quashed and set aside.

10. The application stands allowed.

11. Let a copy of the judgment be communicated to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.05.2024
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