

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71914 of 2018**

Arising Out of PS. Case No.-240 Year-2015 Thana- MADHEPURA District- Madhepura

Chandrama Yadav @ Lalan Yadav Son of Bhupendra Yadav, Resident of Village-
Lakshminia, P.S.-Madhepura Ghailarh, District-Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Kalpna Kumari, Daughter of Late Vijay Kumar, Wife of Chandrama Yadav @ Lalan
Yadav, Resident of Village-Aran, P.S. Bihra, District-Saharsa.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Shailendra Kumar Singh, Advocate
For the Opposite Party/s : Mr.Parmeshwar Mehta, APP

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

Date : 26-04-2024

I.A. No. 1 of 2024

1. Heard learned counsel appearing on behalf of
the parties.

2. The present application dated 15.04.2024
filed to amend the prayer, as to quash the entire
proceedings including cognizance order dated
09.02.2018.

3. Same has not been objected by the learned
counsel appearing for opposite party no. 2.

4. Accordingly, prayer of present quashing
application be read as amended in terms of present
petition.

5. Interlocutory Application No. 01 of 2024



stands allowed and disposed of accordingly.

Cr. Misc. No. 71914 of 2018

6. This application has been filed initially by the petitioner for quashing the order dated 31.08.2018 passed by learned Sessions Judge, Madhepura in Criminal Revision No.149 of 2018, whereby the learned Sessions Judge has dismissed the application filed against the order dated 27.02.2018, passed by learned Chief Judicial Magistrate, Madhepura in connection with Madhepura (Ghailarh) P.S. Case No.240 of 2015, G.R. No. 658 of 2015 by which the learned Chief Judicial Magistrate has cancelled the bail bond of the petitioner.

7. The prosecution case, in brief, is that the informant/opposite party no.2, namely, Kalpana Kumari was married with the petitioner seven years ago according to Hindu tradition and on said occasion of marriage, her father gave cash of Rs.3,00,000/- and one TVS motorcycle and other articles as dowry to the family of the petitioner. It is further alleged that after



some years of marriage, petitioner, father-in-law and mother-in-law again raised demand Rs. 1,00,000/- from brother of the informant and due to non-fulfillment of the said dowry demand, they tortured and assaulted and out of said torture, the informant was compelled to left the house of the petitioner.

8. On the basis of aforesaid written report of the informant, a case was registered as Madhepura (Ghailarh) P.S. Case No.240 of 2015 registered under Sections 498-A, 494, 504, 323, 341, 506 read with 34 of the Indian Penal Code (for short 'IPC') and Sections 3 and 4 of the Dowry Prohibition Act against the petitioner and others.

9. It is submitted by learned counsel that out of certain confusions, opposite party no.2 pressed an application before learned Chief Judicial Magistrate, Madhepura stating thereof, that petitioner has solemnized his marriage with one Bindula Kumari, daughter of Jai Ballabh Yadav, resident of village-



Inarwa, P.S.-Madhepura (Ghailarh), District-Madhepura and on the basis of that, the bail bond of petitioner did not confirm by learned trial court in terms of the order dated 04.01.2016 as passed in Cr. Misc. No.58403 of 2015. Whereafter, on 27.02.2018, the bail bond of petitioner was cancelled for which, a revision application was filed before the learned Sessions Judge, Madhepura, where in the light of observation as made in aforesaid Cr. Misc. No.58403 of 2015, the revision petition also stands dismissed, thereafter, the petitioner approached this Court through present petition.

10. It is submitted that the further proceeding after considering the merit of the case was stayed vide order dated 16.05.2019 passed by this Court and immediately after passing order of stay, the opposite party no. 2 has realized her mistake and she joined the house of her husband/petitioner and since last five years, they are living happily together. Both parties are in person before this Court and they also affirmed the



fact that they are living happily together since last five years, and as now, there is no differences between them. It is submitted that in view of compromise, any further proceeding would only amount to misuse of process of the court of law. It is submitted that in the background of aforesaid fact, the non-confirmation of provisional bail and also the cancellation of bail bond appears bad in the eyes of law. Therefore, the order dated 31.08.2018 as passed by learned Sessions Judge, Madhepura and also the order dated 27.02.2018 as passed by learned Chief Judicial Magistrate, Madhepura be fit to be quashed and set aside, alongwith entire proceedings.

11. Learned counsel also referred to the judgment of Hon'ble Supreme Court as passed in the matter of ***Abhishek vs. State of Madhya Pradesh*** reported in ***2023 SCC Online SC 1083***.

12. Learned APP duly assisted by learned counsel for the opposite party no. 2. submitted that



opposite party no. 2 is residing with petitioner/husband since last five years. It is submitted that under the wrong impression that petitioner is working with one distant relative of his wife, namely, Bindula Kumari, who is also in litigating terms with her husband namely, Vijay Kumar Yadav as per Cr. Misc. No.27249 of 2013 dated 17.06.2014 and out of suspicion, the application regarding second marriage was filed before the learned Chief Judicial Magistrate, Madhepura.

13. It would be appropriate to quote relevant paragraph of the order dated 04.01.2016 as passed in Cr. Misc. No.58403 of 2015, which are as under:-

"Let the learned court below issue notice to the complainant for her appearance. On her appearance, the petitioner will take the complainant to keep her as wife with full dignity and honour. The provisional bail of the petitioner will be confirmed by learned court below in three eventualities (i) if the matrimonial harmony is substantially restored (ii) if the informant fails to appear before the learned court



below or (iii) if the informant gets reluctant to reconcile the issue.

The provisional bail of the petitioner will not be confirmed by the learned Court below if substantial proof comes that the petitioner has performed second marriage."

14. It appears from the aforesaid order that the provisional bail would not to be confirmed only in a condition, when substantial proof of marriage appears available showing that the petitioner has performed second marriage. It further appears that the basis of order of learned Chief Judicial Magistrate and also of learned Sessions Judge, Madhepura is based upon police report, where it has been affirmed that petitioner solemnized the marriage with one Bindula Kumari but, same appears not possible as Bindula Kumari herself is a married lady and she also in litigating terms with her husband, namely, Vijay Kumar Yadav.

15. It would be apposite to reproduce para-13, 14, 15, 16 & 17 of the legal report of Hon'ble Supreme



Court passed in the case of ***Abhishek vs. State of Madhya Pradesh*** reported in ***2023 SCC Online SC 1083***, which are 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.”

16. In view of aforesaid factual and legal submission, as matter now stands compromised between both the parties, who are living happily together since last five years and also by taking a guiding note of ***Abhishek’s case (supra)***, the order of cognizance dated 09.02.2018 passed by learned C.J.M., Madhepura, besides aforesaid, order dated 31.08.2018 passed by learned Sessions Judge, Madhepura in Criminal Revision No.149 of 2018 are hereby set aside and quashed *qua* petitioner alongwith all its consequential proceedings.

17. Let copy of this order be sent to the trial court, without delay.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.04.2024
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