

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58303 of 2015**

Arising Out of PS. Case No.-342 Year-2007 Thana- SAHARSA COMPLAINT CASE
District- Saharsa

Janak Nandani Devi @ Janaknandini Shahi Wife of Late Sitaram Prasad
Shahi, R/o Village-Sukhpur, P.S.District-Supaul

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Madhulika Devi, Daughter of Sri Rana Prasad Singh R/o Village-Patori, P.s.-
Biharia, District-Saharsa.

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 57653 of 2015

Arising Out of PS. Case No.-342 Year-2007 Thana- SAHARSA COMPLAINT CASE
District- Saharsa

Madhusudan Prasad Shahi Son of Late Sitaram Prasad Shahi resident of
Village- Sukhpur, P.S.District- Supaul

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Madhulika Devi, Daughter of Sri Rana Pratap Singh, resident of Village-
Patori, P.S.- Sima, District- Saharsa.

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 58303 of 2015)

For the Petitioner/s : Mr. Dinesh Jha, Advocate
: Mr. Arun Kumar, Advocate

For the Opposite Party/s : Mr. Binod Kumar, App
For the O.P. No. 2 : Mr. Bishwanath Mahto, Advocate

(In CRIMINAL MISCELLANEOUS No. 57653 of 2015)

For the Petitioner/s : Mr. Dinesh Jha, Advocate
: Mr. Arun Kumar, Advocate

For the Opposite Party/s : Mr. Binod Kumar, App
For the O.P. No. 2 : Mr. Bishwanath Mahto, Advocate

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

Date : 01-03-2024



1. Heard learned counsel for the petitioners and learned counsel for the respondents.

2. The present quashing petitions have been preferred to quash the order dated 04.07.2007 passed in Complaint Case No. 342C of 2007, where learned Sub-Divisional Judicial Magistrate, Saharsa took cognizance for the offences punishable under sections 323 and 498A/34 of the Indian Penal Code (In short IPC), where petitioner of Cr. Misc. No. 58303 of 2015 is mother-in-law of O.P. No. 2 and petitioner of Cr. Misc. No. 57653 of 2015 is husband of O.P. No. 2. Both peitioners are dealt and disposed with this common judgment.

3. Opposite Party No. 2 joins the present proceedings.

4. From the crux of complaint petition it appears that petitioner's son was married to respondent no. 2 on 16.06.1998 and on *bidai* she went to her *sasural* with all her articles given by her father. There was a demand of motorcycle, fridge and washing machine by petitioner and her son. It was alleged that after death of father-in-law of O.P. No. 2 petitioner i.e. the mother-in-law started to torture her. Consequent upon, petitioner returned back to her parental house (*naihar*)



alongwith her father. It is further alleged that petitioner's son did not came for second marriage (*gauna*) and therefore she herself went to her matrimonial house (*sasural*) alongwith her brother, where all her belongings and ornaments were kept. Her husband did not welcome her, she had strong suspicion that her husband had illicit relationship with neighbor's girl. She was thus forced to leave her *sasural*. It also appears that wife's parent wanted to reconcile the situation so they gave T.V. and fridge to them. On 15.06.2006 while she was sleeping in her *sasural* they tried to sprinkle kerosene oil on her. She was beaten and thereafter she saved herself any how and came back again to her parental house.

5. It is submitted by learned counsel that petitioner of Cr. Misc. No. 57653 of 2015 being husband having no other option left filed a case before learned Family Court, Saharsa under Section 9 of the Hindu Marriage Act for restitution of marriage but when the notice was served upon O.P. No. 2, she filed present complaint petition on 16.03.2007, where cognizance was taken on 04.07.2007 for the offence punishable under Sections 323 and 498 A/34 of the Indian Penal Code. It is submitted that said restitution petition as filed by petitioners before the learned Family Court, where O.P. No. 2 fails to join,



converted into divorce petition under Section 13 (1) (b) of the Hindu Marriage Act, on the ground of desertion. The approach of O.P. No. 2 was also questionable during pendency of said divorce petition as she failed to turn up to cross-examine the witnesses, who filed their affidavit, as such all evidences remain unimpeached. It is submitted that from the perusal of divorce order as passed in M.M. Case No. 14 of 2006 by Family Court, Saharsa dated 17.12.2009, that parties are living separately since 2001 and as such filing of present complaint case in 2007 is apparently non-convincing on its face and same appears to be brought with an ulterior motive as to counter the petition as filed by petitioner under Section 9 of the Hindu Marriage Act at Family Court, Saharsa. It is also submitted that aforesaid Judgment of divorce was never challenged before High Court and as such it becomes absolute, whereafter both parties solemnized their marriages and are living life happily and as such continuing with the present proceedings would only amount to abuse of process of law. It is also submitted that petitioners are mother-in-law in Cr. Misc. No. 58303 of 2015 and husband in Cr. Misc. No. 57653 of 2015.

6. In support of submissions learned counsel relied upon the report of Hon'ble Supreme Court in the case of



Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others as reported in **(2022) 6 SCC 599**.

7. Learned counsel appearing on behalf of O.P. No. 2 affirmed the submissions as advanced by learned counsel for the petitioners that marriage between the parties dissolved by way of divorce and thereafter O.P. No. 2 solemnized her marriage and leading her conjugal life happily.

8. It would also be apposite to reproduce the paragraph no. 102 of the Apex Court decision in the case of ***State of Haryana and Others vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***, which reads as under:

“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 factual and legal



discussions, as marriage between the parties, admittedly dissolved by way of divorce, where both parties are leading their conjugal life happily after solemnizing their marriage of choice, as such, to continue with the present proceeding would amount only abusing the process of law. It also appears that present criminal proceeding brought with an ulterior motive against petitioners to counter the case of restitution, which is covered under guideline as mentioned in para no. 7 of **Bhajan Lal Case (supra)**, accordingly impugned order of cognizance dated 04.07.2007 with all its consequential proceedings, *qua*, petitioner(s) arising thereof as passed in Complaint Case No. 342C of 2007, pending before learned Sub-Divisional Judicial Magistrate, Saharsa is hereby quashed and set aside.

10. Both above mentioned applications stands allowed.

11. Let a copy of this order be sent to learned Trial Court, immediately.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	

