

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71988 of 2019

Arising Out of PS. Case No.-202 Year-2017 Thana- BHAGWANPUR District- Begusarai

Chandan Kumar Son Of Late Ramanandan Mahto Resident Of Village -
Chakdullam Banbaripur, P.S.- Bhagwanpur, District - Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Suman Kumari Wife of Shiv Kumar D/o- Shree Ram Sundar Mahto,
Resident of Village - Chakdullam Banbaripur, P.S.- Bhagwanpur, District -
Begusarai, At present Village - Makhkha Chak, P.O. - Bakhri Bazar, District
- Begusarai.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Prakash Chandra Jha
For the Opposite Party/s : Mr.Ashok Kumar Singh

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 25-07-2024

Heard learned counsel for the petitioner, learned
APP for the State and learned counsel for the informant.

2. The present application has been preferred for
quashing the order dated 08.02.2019 passed in Bhagwanpur
P.S. No. 202 of 2017 by learned Court of C.J.M., Begusarai
whereby and whereunder cognizance for the offence
punishable under Section 498(A) and 34 of Indian Penal
Code and Section 3/4 of the Dowry Prohibition Act has been
taken against the petitioner.



3. As per the allegation in the FIR, marriage was solemnized between the victim/informant and petitioner's brother(Shiv Kumar) on 13.03.2015. After some days of marriage, husband of the victim started demanding four wheeler and Rupees ten lakhs for purchasing a new house and on denial by the victim/informant, petitioner along with her husband and her in-laws family members started torturing her. It is further alleged that they ousted her from their house.

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is innocent and has committed no offence and has been implicated wrongly and falsely in this case. He is brother-in-law of the victim/informant and there is no specific allegation against him. The allegation levelled against him is general and omnibus in nature. He has no concern with mess and business of the victim/informant and her husband. It is further submitted from para-7 of this petition that the allegation against the petitioner is of torturing the victim and in order to neutralize this allegation, it is submitted that petitioner was student of Bachelor of Engineering at the Millennium Institute of Technology, Bhopal falling under Rajiv Gandhi



Proudyogiki Vishwavidyalaya, Bhopal which was completed on 31.12.2015. The provisional degree of the said B.E. is brought on record which shows that during the period of marriage of the victim/informant and her arrival at matrimonial house, petitioner was at Bhopal for completion of his Engineering Degree. Annexure-1 has been annexed in support of the provisional degree certificate of the petitioner. He also lives separately from them. In fact, from para-10 of this petition, it is submitted that husband of the informant/victim had filed an application under Section 9 of Hindu Marriage Act for restitution of conjugal right vide Matrimonial Case No. 49/17. This petition under Section 9 of Hindu Marriage Act filed on 11.07.2017 which was fixed for reconciliation since 20.12.2018 but informant/victim never appeared before the Court to restore her conjugal life despite hectic efforts and positive attempts of her husband. Ultimately due to absence of informant, the said application under Section 9 of the Hindu Marriage Act was dismissed vide order dated 26.02.2019 and in support of this, the copy of the said order passed in Matrimonial Case No. 49 of 2017 is annexed herewith and marked as Annexure-4 of this petition. The present case is an absolute misuse and abuse of



due process of law and he has been dragged unnecessarily in this case.

5. In contra, learned A.P.P. duly assisted by learned counsel appearing on behalf of victim/informant while opposing the prayer of application submitted that charge sheet has been submitted against the petitioner after completion of investigation on the basis of consistent evidence.

6. Before dealing with the merit of present quashing application, it is necessary to consider the nature and scope of the inherited power of the High Court under Section 482 of Cr.P.C. The said Section saves the inherent power of the High Court to make fresh orders as measures necessary in three different situations.

(a) to give effect to an order under this Court.

(b) to prevent abuse of the process of the Court.

(c) to otherwise secure the ends of justice.

7. In the case of ***Dhruvaram Murlidhar Sonar vs. State of Maharashtra***, reported in ***2019 (18) SCC 191*** in its paragraph no. 13, it has been held that for quashing the



proceedings, meticulous analysis of factum of taking cognizance of an offence by Magistrate not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint does not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in the exercise of inherent powers.

8. Hon'ble Apex Court in the case of *Preeti Gupta & another vs. State of Jharkhand & another*, reported in (2010) 7 SCC 667 has been pleased to rule that there should be a clear allegation against the relatives of the husband and vague & omnibus allegation would not be sufficient to compel them to undergo agony of the trial.

9. Hon'ble Apex Court in the case of *Arnesh Kumar vs. State of Bihar and Another* reported in (2014) 8 SCC 273 has been pleased to observe that there is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498(A) I.P.C. was introduced with an avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498(A)



I.P.C. is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. This simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. In the said case, the Supreme Court has cautioned the courts with regard to proceeding against in-laws and distant relatives of the husband of the wife involved in the offence under Section 498(A) of the I.P.C. and other relevant offences.

10. After considering the aforesaid factual and legal discussions, I am of this view that the present case is misuse and abuse of due process of law. The petitioner, having no concern with informant/victim or her family, has been dragged unnecessarily in this case. The petitioner has no concern with the mess and business of the victim/informant and facing general and omnibus allegation. The petitioner is not concerned at all with the affairs of victim/informant and her husband. He is separate from them.

11. Accordingly, this Cr. Misc. application is allowed



and the cognizance order dated 08.02.2019 passed in Bhagwanpur P.S. Case No. 202 of 2017 by learned Court of C.J.M, Begusarai is quashed and set aside with regard to this petitioner.

(Sunil Kumar Panwar, J)

Shubham/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.07.2024
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