

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17845 of 2024

Arising Out of PS. Case No.-20 Year-2021 Thana- MAHILA P.S. District- Siwan

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1. Md. Tajuddin @ Tajuddin, S/o Late Md. Kabir, R/o village - Jalalpur, P.S.- Marhaura, Distt. - Saran at Chhapra
 2. Afsi Khatoon @ Afsri Khatoon, W/o Md. Tajuddin @ Tajuddin, R/o village - Jalalpur, P.S. - Marhaura, Distt. - Saran at Chhapra

... .. Petitioners

Versus

1. The State of Bihar
2. Rafeya Khatoon D/o Nesar Ahmad R/o village - Sharif Jalalpur, Lakari Nabiganj, P.S - Basantpur, Distt. - Siwan

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Mohammad Sufyan, Advocate Mr. Pratyush, Advocate
For the State	:	Mr. Nawal Kishore Prasad, APP
For the Informant	:	Mr. Ajay Kumar Pandey, Advocate Ms. Shyama Rani, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 08-04-2025

Heard learned counsel for the petitioners and learned APP duly assisted by learned counsel appearing on behalf of the informant/O.P. No.2.

2. The present application has been filed by the petitioners for quashing of the order dated 20.09.2022 passed by learned Sub-divisional Judicial Magistrate, Siwan in connection with Mahila (Siwan) P.S. Case No. 20 of 2021, Tr. No. 3603 of 2024, whereby the learned Jurisdictional Magistrate has taken cognizance against the petitioners for



the offences punishable under Sections 341, 323, 498-A read with 34 of the Indian Penal Code as well as Sections 3 and 4 of the Dowry Prohibition Act.

3. The case of prosecution, in brief, which is based upon the written information of one Rafeya Khatoon submitted before the Officer-in-charge, Mahila (Siwan) Police Station alleging that on 08.11.2016, her marriage was solemnized with one Md. Allauddin in accordance with Muslim Rites and Customs and her parents gave cash of Rs. 1,00,000/- and other articles worth rupees three lakhs as a gift. After her marriage, she went to her *sasural* and lived there happily. Thereafter, her husband (1) Md. Allauddin, (2) Md. Tajuddin (petitioner no.1) and (3) Afsi Khatoon (petitioner no.2) have demanded a Hero Honda Motorcycle and Rs. 50,000/- in cash as dowry and have tortured her physically and mentally and they have also assaulted the informant with fist and slap. It is further alleged that on 18.02.2020, all the accused persons have snatched her belongings and ousted her from her matrimonial home and on 12.12.2020 at 10.00 a.m., all the accused persons have



came at her *naihar* (parental home) and abused her. Accused persons have alleged to assaulted her brother and her husband threatened her to perform second marriage.

4. On the basis of aforesaid written information, Mahila (Siwan) P.S. Case No.20 of 2021 was registered against the petitioners and others under Sections 498-A of the IPC as well as Sections 3 and 4 of the Dowry Prohibition Act.

5. After registration of FIR, the police investigated the case and submitted charge-sheet against the petitioners and other accused persons before the court of learned Sub-divisional Judicial Magistrate, Siwan. Thereafter, the learned Sub-divisional Judicial Magistrate, Siwan took cognizance against the petitioners and others for the offences punishable under Sections 341, 323, 498-A read with 34 of the IPC as well as Sections 3 and 4 of the Dowry Prohibition Act on 20.09.2022.

6. Learned counsel appearing on behalf of the petitioners submitted that the petitioner no.1 is the brother-in-law (*Bhaisur*) and petitioner no.2 is the sister-in-law



(*Gotni*) of the informant. It is further submitted that the informant often nag her husband to live separately by leaving joint family, as she was desirous to get separate share in the family property and due to this, the petitioners were implicated falsely in the present case.

7. Learned counsel further submitted that on 07.03.2019, the petitioner no.1, husband of O.P. No.2 and other family members reached on a mutually agreed settlement in the presence of the members of Panchayat and as per said agreement, a detailed formulation was made *qua* usage of the residential house and other ancestral properties. It is further submitted that as per aforesaid settlement, the petitioners started living separately from the informant and her husband and they have no concern with daily and domestic affairs of O.P. No. 2 and her husband.

8. Learned counsel further submitted that on 21.09.2019, the informant with her family members assaulted the petitioner no.2 and other family members and took away cash and other expensive items of petitioners for which, the petitioner no.1 had filed a complaint case vide



Complaint Case No.3393 of 2019 against the informant/O.P. No.2 and her family members before the court of learned Chief Judicial Magistrate, Chhapra, Saran. Thereafter, on 16.08.2021, the learned Judicial Magistrate-1st Class, Chhapra, took cognizance against the informant and one Shadrul under Sections 341, 323, 506 and 379 of the IPC. In retaliation to aforesaid complaint case, the informant wanted to take revenge from the petitioners, resultantly falsely implicated the petitioners with present case. It is further submitted that the learned Jurisdictional Magistrate has taken cognizance against the petitioners in very mechanical manner without applying the settled principle of law, as no offence has been made out against the petitioners, which is also evident from perusal of FIR and allegation alleged thereof, therefore, the impugned order of cognizance is fit to be quashed and set aside. It is further submitted that the allegation levelled in the FIR against the petitioners appears very much general and omnibus *qua* alleged cruelty as said to be committed upon O.P. No. 2.

9. In support of his aforesaid submission, learned



counsel has relied upon the legal report of Hon'ble Supreme Court as available in the matter of **Abhishek vs. State of Madhya Pradesh** reported in **2023 SCC OnLine SC 1083**.

10. On the other hand, learned APP appearing for the State duly assisted by learned counsel appearing for the informant/O.P. No.2 submitted that the petitioners have assaulted and tortured the informant due to non-fulfilment of demand of dowry but, fairly conceded that in terms of Panchayati *prima-facie* petitioners appears living separately from the informant and her husband and they have no concern with daily and domestic routine of the informant and her husband.

11. It would be apposite to reproduce para-13, 14, 15, 16 and 17 of the legal report of Hon'ble Supreme Court passed in the case of **Abhishek case** (supra), 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 vs. Bhajan Lal [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’.”

12. From perusal of FIR, it transpires that in the FIR, the informant has raised a very general and omnibus allegation *qua* alleged cruelty and demand of dowry against the petitioners. The petitioners are living separately from the informant as per agreed family settlement and *prima-facie* they have no concern with daily and domestic affairs of the informant and her husband. It further appears that since petitioner no.2 has filed a complaint case before the court of learned Chief Judicial Magistrate, Chhapra, Saran against the



informant and her family members, as discussed aforesaid, in retaliation thereto, the informant has implicated the above-named petitioners in present case being in-laws out of her malicious approach.

13. In view of aforesaid factual and legal submissions and by taking a guiding note of **Abhishek case** (supra), the impugned order taking cognizance dated 20.09.2022 as passed by learned Sub-divisional Judicial Magistrate, Siwan in connection with Mahila (Siwan) P.S. Case No. 20 of 2021, Tr. No.3603 of 2024 *qua* both above-named petitioners is hereby quashed and set aside.

14. The application stands allowed.

15. Let a copy of this order be communicated to the learned trial court immediately.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.04.2025
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