

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.188 of 2021**

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Rubi Kumari Pati - Dr. Ritesh Kumar, Vartaman Pata - Pita - Balmukund Singh, Gram- Soniyawa, Post - Khushalpur, Thana - Telharda, Zila - Nalanda.

... .. Petitioner/s

Versus

Dr. Ritesh Kumar Pita - Shailendra Singh, Gram - Makhdumpur, Post - Badi Paithana, Thana - Islampur, Zila - Nalanda, Pin Code - 801303.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Indradeo Prasad, Advocate
For the Respondent/s : Mr. Girijish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
Date : 10-02-2025

Today, the matter has been fixed under the heading
'For Orders (On Office Notes)'.

02. Office has pointed out certain defects and the learned counsel for the petitioner submits that defect pointed out by the office at serial no. 14 has been rectified by filing translated copy of the petition. Learned counsel further seeks time for removal of remaining defects pointed out by the office.

03. However, learned counsel appearing on behalf of respondent submits that present civil miscellaneous case arises out of an order passed in Matrimonial Case No. 296 of 2016 but the said matrimonial case has been dismissed for non-prosecution vide order dated 13.12.2023 passed by the learned Principal Judge, Family Court, Biharsharif at Nalanda.



Therefore, learned counsel submits that nothing remains in the matter and the matter has become infructuous.

04. Countering the submission of the learned counsel for the respondent, learned counsel for the petitioner submits that even though reliefs claimed against the impugned order dated 23.01.2021 passed by the learned Principal Judge, Family Court, Bihar Sharif at Nalanda in Misc. Case No. 20 of 2018 has become infructuous but the petition filed under Section 340 of the Code of Criminal Procedure before the learned trial court on 25.04.2019 has been pending and a direction has been sought as one of the reliefs in the present petition for its due disposal and even after dismissal of the main petition, the petition filed under Section 340 of Cr.P.C. would remain on record unless it is disposed of. The learned counsel submits that the petition under Section 340 Cr.P.C. has been filed for taking action against the respondent for filing false affidavit in the court proceeding.

05. Learned counsel appearing on behalf of respondents has no objection for disposal of petition filed under Section 340 of Cr.P.C. though he submits orders could not be passed for disposal of petition filed under Section 340 of Cr.P.C. in a proceeding under Article 227 of the Constitution of India.

06. Perused the record. The instant petition has been



filed seeking following relief(s):

- “i. For quashing of order dated 23.01.201 passed by the Ld. Shri Vijay Anand Tiwari, Principal Judge, Family Court, Nalanda in Misc. Case No. 20 of 2018, whereby the execution of ex-parte order dated 17.02.2018 passed in Matrimonial Case No. 296 of 2016 has been set aside with cost of Rs.5,000/-*
- ii. For direction upon the Principal Judge, Family Court, Nalanda to adjudicate the application of petitioner filed u/s 340 of Cr. P. C. and to dispose of the same, so that no one can dare to produce false evidence in concocted case.*
- iii. To pass any other orders/directions, which your Lordship may deem fit and proper in the facts and circumstances of the case.”*

07. Having regard to the submission of the parties, it transpires that the impugned order 23.01.2021 has been passed in Misc. Case No. 20 of 2018, which has been filed for quashing the order dated 17.02.2018 passed in Matrimonial Case No.296 of 2016 and the said matrimonial has been dismissed for non-prosecution vide order dated 13.12.2023 and thus, so far as relief no. 1 claimed by the petitioner is concerned, the instant civil miscellaneous petition has become infructuous.

08. However, the learned trial court is directed to dispose of the petition dated 25.04.2019 filed under Section 340 of Cr.P.C. in accordance with law at the earliest since the said



petition is stated to be filed for taking action for filing false affidavit before the learned trial court.

09. Accordingly, the present petition stands disposed of.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.02.2025
Transmission Date	NA

