

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22779 of 2025

In
CRIMINAL MISCELLANEOUS No.35030 of 2017

Arising Out of PS. Case No.-88 Year-2011 Thana- KAHALGAON District- Bhagalpur

Deepak Sharma @ Dipak Sharma S/O Late Bholanath Sharma R/O 168,
Ramesh Goshwami Road, Maniktalla, P.O- Kanchapara, P.S- Bizpore, Distt.-
North 24 Pargana (W.Bengal).

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Purushottam Kumar Das, Advocate

For the Opposite Party/s : Mr. Abhay Kumar Roy, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 09-05-2025

Re: Cr. Misc. No. 22779 of 2025:

Heard the parties.

2. The present restoration application has been filed for restoration of Cr. Misc. No. 35030 of 2017 to its original file, which was dismissed for non-prosecution *vide* order dated 01.08.2023.

3. For the reasons mentioned in the restoration petition, the present restoration petition is allowed and Cr. Misc. No. 35030 of 2017 is restored to its original file.

Re: Cr. Misc. No. 35030 of 2017:

4. The present application has been filed challenging the order dated 16.05.2017 passed by the learned Additional Sessions Judge-V, Bhagalpur in Sessions Trial No.



684 of 2013, arising out of Kahalgaon P.S. Case No. 88 of 2011 under Section 498A read with Section 34 of the Indian Penal Code and under Sections 3 and 4 of Dowry Prohibition Act, whereby the discharge application of the petitioner was dismissed by the trial Judge.

5. As per prosecution case, the daughter of informant was subjected to torture and abuse by the petitioner and co-accused persons over non-fulfillment of dowry demand and they also threatened to kill her daughter. It is further alleged that informant received information that her daughter had died and when she reached her daughter's matrimonial home, informant's grand-son informed her that his father (petitioner) had killed his mother (victim).

6. Learned counsel for the petitioner submits that petitioner is the husband of the deceased and he prays for his discharge primarily on the ground of delay in filing of the complaint.

7. On the allegations levelled in the complaint and the statements of the witnesses examined *prima facie* offence as alleged under Section 498A read with Section 34 of the Indian Penal Code and under Sections 3 and 4 of Dowry Prohibition Act is made out against the petitioner. At the stage of framing of



charge, the trial Judge has to examine as to whether the *prima facie* case for trial is made out or not. A *prima facie* case for conviction cannot be found out by the trial Judge.

8. The Hon'ble Supreme Court in the case of ***State of Gujarat v. Dilipsinh Kishorsinh Rao*** reported in (2023) 17 SCC 688 and paragraph nos. 10, 11 and 12 of the said case are read as follows:

“10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

11. This Court in State of T.N. v. N. Suresh Rajan adverting to the earlier propositions of law laid down on this subject has held: (SCC pp. 721-22, para 29):

“29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the



materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

12. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227 Cr.P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.” (Emphasis supplied)

9. In view of the aforesaid, there is no merit in the present application and this application is dismissed accordingly.

(Sandeep Kumar, J)

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