

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54379 of 2015

Arising Out of PS. Case No.-1195 Year-2009 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

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Sunil Kumar Tiwary @ Sunil Tiwary Son of Late Ramakant Tiwary R/o
Village - Karkatha, P.S. Kateya, District - Gopalganj

... .. Petitioner/s

Versus

1. State of Bihar
2. Manisha Devi, Daughter of Chandrama Bhagat, At Present resident of
village - Chathiwa, P.O.- Dubey Jigna, P.S.- Bhorey, District - Gopalganj

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Naresh Dikshit, Advocate Mr. Sumit Shekhar Pandey, Advocate
For the State	:	Mr. Tapeswar Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

7 06-02-2025 Heard Mr. Naresh Dikshit, learned counsel appearing
for the petitioner and Mr. Tapeswar Sharma, learned APP for
the State.

2. The instant petition has been filed under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') with a prayer to set aside the order dated 02.02.2010 passed by learned S.D.J.M, Gopalganj in Trial No. 8273 of 2015 by which the cognizance of the offences under Sections 498A, 406 and 420 of the Indian Penal Code (in short 'IPC') has been taken and the petitioner and other co-accused persons have been summoned for the said offences.

3. The main grounds taken by the petitioner's counsel



to assail the order impugned are that the petitioner, Sunil Kumar Tiwary is not a family member of the husband of the O.P. No. 2 (complainant), the O.P. No.2 filed her complaint with the main allegations of cruelty allegedly committed by all the accused persons named in the complaint on account of non-fulfillment of the accused persons' demand of a pump set of Ten Horse Power, if the entire allegations made by the complainant in the complaint are taken into consideration, no specific allegation appears against this petitioner with regard to the alleged cruelty except the allegation of misappropriation of Rs. 25,000/- by the petitioner which is said to have been entrusted to him during the process of mediation of marriage talk in between the complainant's family and her in-laws but it is an admitted position that the petitioner was simply a mediator in the marriage talk in between the complainant's parental family members and her in-laws' family and the allegation is completely absurd and unbelievable as the marriage of the complainant took place in the year 2008 and the complaint was filed in the year 2009 and during that period, neither the complainant's father nor her in-laws came forward with an allegation of misappropriation of said amount and further, before the Magistrate while recording the statement during the



course of inquiry, the complainant did not say anything regarding the misappropriation of the alleged amount of Rs. 25,000/-.

4. Learned APP for the State has opposed this petition and submitted that there is specific allegation against this petitioner with regard to the misappropriation of an amount of Rs. 25,000/-.

5. Heard both the sides and perused the order impugned and the other relevant materials. This Court finds substance in the aforesaid submissions and grounds taken by the petitioner's counsel as admittedly, the petitioner is not a family member of the in-laws of the complainant (O.P. No. 2), so, the trial court's order summoning the petitioner for the offence under Section 498A of IPC is completely bad in the eye of law and so far as the other offences of which cognizance has been taken, the allegation levelled against this petitioner with regard to misappropriation of a sum of Rs. 25,000/- which is said to have been entrusted to this petitioner at the time of marriage talk, is completely unbelievable and absurd and further, as per above submission, the complainant did not say anything regarding the said allegation before the learned Magistrate while recording her statement during the course of inquiry. The order



impugned shows non-application of judicial mind by the concerned Magistrate and the same has been passed in mechanical manner. Accordingly, this Court finds the order impugned summoning the petitioner for the alleged offences to be bad in the eye of law, so, it stands set aside to the extent of the petitioner only and the instant petition stands allowed.

(Shailendra Singh, J)

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