

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30790 of 2016

Arising Out of PS. Case No.-213 Year-2009 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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Bipin Bihari Lal, son of Late Ujagir Prasad, resident of Missir Bazar, behind the Rai Shabka Hotel, Missir Bazar, Gazipur, Police Station Kotwali, Gazipur, District- Gazipur, U.P..

... .. Petitioner/s

Versus

1. State of Bihar
2. Priyanka Srivastava, daughter of Shchindra Nath Srivastava, mohalla Awadhesh Aabha Niwas, behind CMC Kaliasthan, Sasaram, District Rohtas.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Pratik Kr. Sinha, Adv. Mr. Prabhat Kumar, Adv.
For the State	:	Mr. Binod Kumar No. 3, APP
For the O.P. No. 2	:	Mr. Ashutosh Tripathi, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT

Date : 18-12-2025

Mr. Pratik Kr. Sinha, learned counsel for the petitioner, Mr. Ashutosh Tripathi, learned counsel for O.P. No. 2, and Mr. Binod Kumar No. 3, learned APP for the State, have been heard at length.

2. The instant criminal miscellaneous petition has been filed under section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') (now section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, 'BNSS')) for quashing the order dated 11.05.2016 passed by the court of the SDJM, Sasaram, in Complaint Case No. 213 of 2009, by which



the learned trial court has rejected the petitioner's prayer for discharge.

3. Learned counsel for the petitioner has argued that O.P. No. 2, who happened to be the wife of the petitioner, initially filed Complaint Case No. 942 of 2008 alleging the offences under Sections 498A, 323, and 379 of the Indian Penal Code (in short, 'IPC') and also alleging the offences under Sections 3 and 4 of the Dowry Prohibition Act (in short, 'DP Act'), and after inquiry, the learned SDJM, Sasaram, took cognizance of the offences under Section 498A of the IPC and Sections 3 and 4 of the DP Act vide order dated 22.10.2008. In the said Complaint Case No. 942 of 2008, the complainant (O.P. No. 2) did not make the allegation that, on the demand made by the petitioner's father, namely Ujagir Prasad, the co-accused, Rs. 5,75,000/- (Rupees Five Lakhs Seventy-Five Thousand) was paid; rather, O.P. No. 2 alleged in her statement in Complaint Case No. 942 of 2008 that she had been tortured for want of dowry. In fact, the complainant (O.P. No. 2) refused to go to Ghazipur where the petitioner was posted during the relevant period of time, and at that time, the presence of O.P. No. 2 was required due to the illness of the petitioner's father. Due to the ill-behaviour of O.P. No. 2, the petitioner filed a matrimonial



suit bearing Matrimonial Case No. 227 of 2008 in the court of the District Judge, Ghazipur, for restitution of his conjugal life. Prior to the complaint case of the present matter, the mother of O.P. No. 2 had filed an application before the Women Commission in which she did not make any complaint against the petitioner or any of his family members with regard to the allegation of non-return of the so-claimed *Stridhan* of O.P. No. 2. The petitioner's sister, who was made co-accused in Complaint Case No. 942/2008, approached this Court for quashing of the cognizance order, and her prayer was allowed by this Court. The Complaint Case No. 213/2009, in which the order impugned has been passed, has been filed by O.P. No. 2 in the court of the SDJM at Sasaram, which has no jurisdiction to try the said case, as the alleged occurrence is said to have taken place at Nirala Nagar, Ballia, in Uttar Pradesh. Therefore, in view of the provisions of Section 179 of the Cr.P.C. (now section 199 of BNSS), the entire trial and proceeding before the court of the learned SDJM, Sasaram, is without jurisdiction. It has been further argued by the petitioner's counsel that the petitioner's father, Ujagir Prasad, who has been made accused No. 2 in Complaint Case No. 213/2009 by O.P. No. 2, is no more and died after filing of the said complaint case. The



cognizance for the offence under Section 6 of the DP Act is completely bad in the eye of law, as it is barred by limitation under the provisions of section 468 of the Cr.P.C. (section 514 of BNSS). Though the petitioner had challenged the cognizance order dated 22.02.2012 before this Court by way of Cr. Misc. No. 13572 of 2012 but the same was disposed of by giving the petitioner a liberty to raise all his points, including the point of cognizance, at the appropriate stage before the trial court. Though at the time of making the prayer for discharge, the petitioner could not have raised the question of time-barred cognizance for the offence under Section 6 of the DP Act, even then the petitioner's right to raise this issue before this Court in this quashing application cannot be taken away in light of the settled proposition of law. It has been further argued that even at the time of framing of charges, the question of the limitation period for cognizance, if raised, must be examined by the concerned court, which will decide the prayer for discharge; and merely because cognizance has been taken, the accused will not lose his right to raise the question of limitation for cognizance at the time of deciding his prayer for discharge. In this regard, the observations made in paragraphs 7 to 11 and 17 in the case of *Arun Vyas & Ors. vs. Anita Vyas*, Cr. App. No. 574 of 1999, by



the Hon'ble Apex Court, are relevant. The said observations, upon which reliance has been placed by the petitioner's counsel, are being reproduced as under:

“7. On these above submissions, two questions arise for consideration, namely:

- (i) whether the learned Magistrate can discharge an accused after taking cognizance of an offence by him but before the trial of the case; and*
- (ii) whether learned Magistrate was right in discharging the appellants on the grounds that the complaint was barred by limitation under Section 468 CrPC.,*

8. Point No. (i) : The answer to this point can be found in Section 239 CrPC, which is in the following terms:

“239. When accused shall be discharged.—If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

9. A perusal of the aforementioned section shows that the Magistrate has to discharge the accused : if (1) on consideration of (a) the police report, (b) the documents filed under Section 173 CrPC; and (2) making such examination, if any, of the accused as the Magistrate thinks necessary; and (3) after giving the prosecution and the accused an opportunity of being heard, he considers the charge against the accused to be groundless. This section,



however, casts an obligation on the Magistrate to record his reasons for holding that the charge is groundless and discharging the accused.

10. Section 239 has to be read along with Section 240 CrPC. If the Magistrate finds that there is prima facie evidence or the material against the accused in support of the charge (allegations) he may frame the charge in accordance with Section 240 CrPC. But if he finds that the charge (the allegations or imputations) made against the accused do not make out a prima facie case and do not furnish basis for framing charge, it will be a case of charge being groundless, so he has no option but to discharge the accused. Where the Magistrate finds that taking cognizance of the offence itself was contrary to any provision of law, like Section 468 CrPC the complaint being barred by limitation, so he cannot frame the charge, he has to discharge the accused. Indeed in a case where the Magistrate takes cognizance of an offence without taking note of Section 468 CrPC, the most appropriate stage at which the accused can plead for his discharge is the stage of framing the charge. He need not wait till completion of the trial. The Magistrate will be committing no illegality in considering that question and discharging the accused at the stage of framing the charge if the facts so justify.

11. Point No. (ii) : The new CrPC contains Chapter XXXVI, (Sections 467 to 473) which deals with limitation for taking cognizance of certain offences. Section 467 defines the period of limitation for the purposes of that chapter, to mean the period specified in Section 468 for taking cognizance of offence. Bar to taking cognizance on the expiry of period of limitation and extension of period of limitation, are dealt in by Sections 468 and 473 respectively. The point of commencement of period of limitation in the case of continuing offence is embodied in Section 472 and



in the case other than a continuing offence is contained in Section 469. The provisions for exclusion of time in computing the period of limitation are incorporated in Sections 470 and 471.

17. Any finding recorded by a Magistrate holding that the complaint to be barred by limitation without considering the provisions of Section 473 CrPC will be a deficient and defective finding, vulnerable to challenge by the aggrieved party. In this case the complaint was clearly barred by limitation and no explanation was offered for the inordinate delay; this is what the learned Magistrate took note of and concluded that the complaint was barred by limitation. This is correct insofar as the offence under Section 406 is concerned. Therefore, in regard to Section 406 the order of the learned Magistrate discharging the appellants cannot be faulted with. But regarding offence under Section 498-A the learned Magistrate did not advert to the second limb of the second part in Section 473 CrPC referred to above. The order of the learned Magistrate on this aspect was unsustainable so the High Court has committed no illegality in setting aside that part of the order of the learned Magistrate.”

4. It has been lastly argued by the petitioner’s counsel that in Matrimonial Case No. 442/2019 filed by the petitioner in the Family Court, Baliya, for dissolution of the marriage, though the petitioner’s prayer was allowed, he was directed to pay Rs. 20,00,000/- (Rupees Twenty Lakhs) as permanent alimony to respondent No. 2 (O.P. No. 2). Against the judgment passed in Matrimonial Case No. 442/2019, O.P. No. 2 preferred First Appeal Case No. 267/2020 before the Hon’ble Allahabad High



Court, and in that appeal, before the Hon'ble Bench, the bank drafts of Rs. 20,00,000/- (Rupees Twenty Lakhs) issued by the petitioner in favour of O.P. No. 2 were accepted by the learned counsel appearing for O.P. No. 2. In this regard, the relevant documents have been filed with the supplementary affidavit. Hence, in light of the receipt of the said permanent alimony, O.P. No. 2 now has no right to raise an issue regarding the non-return of her so-called *Stridhan*, as the permanent alimony has been given to her to settle all the matters relating to her maintenance, including the non-return of her *Stridhan*. But, even then, O.P. No. 2 has filed Complaint Case No. 213/2009 only with *mala fide* intention to harass the petitioner.

5. On the other hand, learned counsel appearing for O.P. No. 2 has argued that the petitioner has already challenged the cognizance order dated 22.02.2012 passed in Complaint Case No. 213/2009 by filing Cr. Misc. 13572/2012, and the same was rejected; therefore, at this stage, he has no right to question the legality of the cognizance. The O.P. No. 2 has not lost her right to recover her *Stridhan* from the petitioner despite receiving the said permanent alimony, as, firstly, there was no condition in the order concerning the grant of permanent alimony debarring O.P. No. 2 from raising her grievance under



section 6 of the D.P. Act, and secondly, the permanent alimony was meant for her maintenance. It is a settled proposition of law that the period of limitation for taking cognizance of an offence under section 6 of the D.P. Act starts on the date when O.P. No. 2 filed her Complaint Case No. 213 of 2009. The father of the petitioner received Rs. 5,75,000/- through different bank drafts issued on different dates from the father of O.P. No. 2, and in this regard, there is sufficient documentary evidence which has been filed before this Court with the counter affidavit. In the previous complaint (Complaint Case No. 942/2008) filed for offences under Section 498A and other provisions of the IPC, the allegation of misappropriation of the *Stridhan* of O.P. No. 2 by the petitioner and his family members was made, and in this regard, the complaint petition of Complaint Case No. 942/2008 and the statement of O.P. No. 2 in that case may be perused. In light of the provisions of section 181 of the Cr.P.C. (section 201 of BNSS), the SDJM, Sasaram, has jurisdiction to try the said complaint case of O.P. No. 2, as an offence of misappropriation or breach of criminal trust may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property which is the subject matter of the offence was received or retained or was required to be returned



or accounted for by the accused persons. In light of the statement made in paragraph No. 3 of Complaint Case No. 213 of 2009, during the relevant period, the complainant (O.P. No. 2) was residing with her elder brother, namely Sanjay Srivastava, at Sasaram along with her parents and her child. The learned trial court has rightly rejected the discharge prayer of the petitioner, and there is no illegality in the same, and the instant petition is fit to be rejected. In respect of this contention, learned counsel has placed reliance upon the judgment of the Hon'ble Apex Court passed in the case of *Sarah Mathew vs. Institute of Cardio Vascular Diseases*, reported in (2014) 2 SCC 62.

6. I have heard both sides and perused the impugned order and other relevant materials. Against the petitioner, O.P. No. 2 has filed Complaint Case No. 213/2009 alleging the commission of an offence punishable under section 6 of the D.P. Act, of which cognizance has been taken by the learned trial court, and thereafter, the petitioner made a prayer for discharge from the alleged offence, but his prayer has been rejected by the impugned order. The first and foremost contention raised by the petitioner is that the cognizance of the offence punishable under section 6 of the D.P. Act by the trial court is time-barred in light



of the provisions of section 468 of the Cr.P.C. (now section 514 of BNSS). It is submitted by the petitioner's counsel that though the petitioner challenged the cognizance order dated 22.02.2012 before this Court by way of Cr. Misc. No. 13572 of 2012, but the same was not decided on merits, and the petitioner was given a liberty to raise his objections at an appropriate stage. So, even at the stage of framing of charge, the petitioner has the right to raise the question of time-barred cognizance.

6.1. Though, in light of the principle laid down by the Hon'ble Apex Court in the case of *Arun Vyas (supra)*, an accused against whom cognizance has been taken has a right to raise the question of limitation even at the stage of framing of charge, and then the Magistrate/trial court is bound to take into account such question for deciding before proceeding ahead for framing the charges because if the cognizance of an offence is time-barred and there is no ground for extension of the period of limitation under section 473 of the Cr.P.C. (now section 519 of BNSS), then the entire trial after framing of charge will be meaningless, hence, such question must be decided at the earliest before the start of the trial.

6.2. So far as the present matter is concerned, section 7(2) of the D.P. Act states that the provisions regarding the time



limit (Chapter XXXVI of the Cr.P.C., now, Chapter XXXVIII of the BNSS) for filing a complaint under the normal criminal procedure shall not apply to any offence punishable under the D.P. Act. This means that there is no strict limitation period for filing a complaint for a dowry offence, allowing the cases to be pursued even years after the incident. Accordingly, there is no limitation period for taking cognizance of an offence punishable under the D.P. Act, as nothing in Chapter XXXVI of the Cr.P.C. (now Chapter XXXVIII of the BNSS) shall apply to any offence punishable under the said Act.

6.3. If the limitation period for cognizance, as prescribed under Chapter XXXVI of the Cr.P.C. (now Chapter XXXVIII of the BNSS), were to be deemed applicable in respect of an offence punishable under the D.P. Act, even then the cognizance under section 6 of the D.P. Act in the present matter cannot be deemed to be time-barred. As according to section 469 of the Cr.P.C. (now section 515 of BNSS), if the date of the offence is unknown, then the period of limitation for taking cognizance will start on the day when the aggrieved person or the police officer first learns about the offence. In the instant matter, as per the complaint filed by O.P. No. 2, the complainant (O.P. No. 2) had been residing in the company of



the petitioner till December 2008, and as per the previous complaint filed by O.P. No. 2 for the offence under section 498A of the IPC, the complainant (O.P. No. 2) was in the company of the petitioner till July 2008. Though between 2004 and July or December 2008, the relationship between the petitioner and O.P. No. 2 became strained on account of the alleged cruelty and dowry demands allegedly made by the petitioner and his family members with O.P. No. 2, but as per prosecution, O.P. No. 2 had been residing with the petitioner till July or December 2008. Therefore, in such a situation, it cannot be deemed that O.P. No. 2 had developed the feeling that her in-laws, including the petitioner, would not return her *Stridhan*, and such a feeling can be deemed to have developed in the mind of O.P. No. 2 when she finally left the company of the petitioner and her in-laws. Thus, from the very day the complainant finally left the company of her husband and in-laws, the period of limitation for the offence under section 6 of the D.P. Act can be deemed to have commenced, and the complaint was filed by O.P. No. 2 in February 2009, within three years from the commencement of the period of limitation. The Hon'ble Apex Court in the case of ***Ghanshyam Soni vs. State (Govt. of NCT of Delhi) & Anr.***, reported in **2025 SCC OnLine SC 1301**, held that to calculate



the limitation period under section 468 of the Cr.P.C., the relevant date is the date of filing of the complaint or the date of institution of prosecution, and not the date on which the Magistrate takes cognizance; and in the said judgment, the Hon'ble Apex Court reiterated the principle laid down in ***Bharat Damodar Kale & Anr. vs. State of Andhra Pradesh***, reported in **(2003) 8 SCC 559**. Accordingly, there is no merit in the above-mentioned contention of the petitioner's counsel, as, firstly, as per section 7(2) of the D.P. Act, the provisions of Chapter XXXVI of the Cr.P.C. do not apply to cognizance of the offences punishable under the D.P. Act, and secondly, even otherwise, the cognizance under section 6 of the D.P. Act has been taken within three years from the date when the limitation period for cognizance commenced, if the limitation provisions were deemed applicable.

6.4. So far as the payment of permanent alimony by the petitioner to the O.P. No. 2 is concerned, the petitioner is not entitled to be exonerated from the criminal liability having arisen against him on account of not returning the *Stridhan* of the O.P. No. 2 as granting of permanent alimony is different matter and the constitution of offence under section 6 of the DP Act is different and further, the petitioner has not shown any



term or condition between him and the O.P. No. 2, at the time of granting and receiving the permanent alimony, indicating that the O.P. No. 2 had agreed to relinquish her right to claim her *Stridhan*.

7. Now, I come to the factual aspects of the present matter with regard to the allegation attracting the penal provisions of section 6 of the DP Act. As per the allegation, before the solemnization of marriage, on the demand of the father of the petitioner, Rs. 5,75,000/- (Rupees Five Lakhs Seventy Five Thousand) was paid by the father of the O.P. No. 2 through different bank drafts on different dates and at that time, the petitioner's father assured the father of the complainant (O.P. No. 2) that after the marriage, the said money would be deposited in the joint names of the O.P. No. 2 and the petitioner but in this regard, no step was taken. The complainant has given documentary proof, such as, banks' drafts' copies by which the said payment was made and further, the petitioner has not denied the factum of receiving the said money and the petitioner has not taken the plea that the said amount of Rs. 5,75,000/- had been returned back to the O.P. No. 2. The O.P. No. 2 has also alleged that her ornaments detailed in the Schedule B of her Complaint Case No. 213/2009 have not been returned back to



her. The Complainant remained firm to the said allegations while recording her statement on oath before the trial court under section 200 of the Cr.P.C. (now, section 223 of BNSS). Though in the previous complaint (Complaint Case No. 942/2008) filed by the O.P. No. 2 with regard to the alleged commission of the offence under section 498A of IPC, the O.P. did not reveal the payment of Rs. 5,75,000/- by her father to the petitioner's father but the said complaint was mainly filed for the offence under section 498A of IPC and further, in that complaint, it was also alleged by the O.P. No. 2 that her *Stridhan*, including her cash amount, ornaments and valuable clothes, etc., had been snatched by the accused and further, such contradiction as pointed out by the petitioner is a subject of the trial, upon which a right conclusion can be made only after taking evidences by the trial court. So far as the question of jurisdiction raised by the petitioner is concerned, I am of the view that the said question should be left open for the trial court as the same also requires evidences. At this stage, the petitioner has not succeeded to persuade this Court to form the opinion that the accusation levelled by the O.P. No. 2 in her complaint is groundless. There is sufficient *prima facie* evidence to attract the offence under section 6 of the DP Act against the petitioner



and the trial court has rightly rejected the petitioner’s prayer for discharge. Accordingly, this Court finds no merit in this petition, so, it stands dismissed.

(Shailendra Singh, J)

annu/-

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