

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37137 of 2022

Arising Out of PS. Case No.-70 Year-2015 Thana- RUPASPUR District- Patna

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NAGENDRA KUMAR S/O LATE JAIRAM SHARMA Resident of village-
Puran, Post- Puran, P.S.- Karpi, District- Arwal Pin- 804419

... .. Petitioner/s

Versus

1. The State of Bihar
2. SINDHU DEVI D/O MAKESHWAR SHARMA Resident of H/No.- 161,
Mohalla- Ramjay Pal Nagar, Gola Road, Danapur (Near Shafi Alam - IPS),
P.S.- Rupaspur, District- Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	: Mr.Rohit Mishra
For the Opposite Party/s	: Mr.Binod Kumar

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 08-04-2025 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

2. The present application has been preferred under section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.' for short) by the petitioner assailing the order dated 13.06.2022 passed by the Judicial Magistrate First Class, Danapur whereby the learned magistrate had rejected the application under section 239 for discharge filed by the present petitioner in connection with Rupaspur P.S. Case No. 70 of 2015 (GRPS Case No. 978 of 2015).

3. The case of the prosecution in brief relevant for the present application is that the present petitioner had conspired



with other co-accused persons and had aiding in the second marriage of the husband of the O.P. no.2. As per the F.I.R. the O.P. no.2, Sindu Devi had submitted a written report to the officer-in-charge, Rupaspur P.S. on 20.03.2015 wherein the informant had stated that her marriage was solemnised with one Ashutosh Kumar according to Hindu rites on 27.02.2009 and her husband was posted as Program Officer (MGNREGA) in Bhojpur District, Sahpur at the time of her marriage further that he is presently posted at Muzaffarpur. The informant next states that her husband along with his family members were residing at Nehru Nagar, P.S. Patliputra and after marriage the informant was also residing at the aforementioned residence of her husband. The informant had a daughter who was born on 21.02.2010 from the wedlock. The informant alleges that her husband, mother-in-law, father-in-law and sister-in-law were threatening the informant that they would perform the second marriage of her husband. It is further alleged that for the past three years the informant was tortured at the hands of the accused persons and she was also kicked out of the matrimonial house and ever since the informant along with her daughter has been living at her paternal house with her father. The informant thereafter states that on 18.03.2015 she came to know that her



husband had married one Mintu Kumari on the instigation of the family members of her husband. It is alleged that the said marriage was performed at *Hanuman Garhi Asram* on 02.12.2014 in silence and secrecy. Thereafter the father of the informant met with the temple priest (*pujari*) who had confirmed about the marriage taking place at the said temple and had also showed the concerned records and receipt. It was alleged that the *mausa* (maternal uncle), i.e., the present petitioner was also involved in conspiring and aiding in the said second marriage.

4. Based on the aforesaid written complaint of the informant the FIR Rupaspur P.S. 70 of 2015 was registered on 20.03.2015 under sections 494 read with section 34 of the Indian Penal Code (IPC).

5. The learned counsel for the petitioner submits that the present petitioner is an assistant teacher and at the relevant point in time he was posted at Middle School Saraiya, Barhara, Bhojpur. It is emphasised that one distant relative of the petitioners namely Surendra Singh had enquired about a place for performing certain rituals (*puja-path*) and in response thereof the petitioner had suggested the name of the *Hanumangarhi ashram*. It is further vehemently emphasised by



the learned counsel for the petitioner that since the temple priest (*pujari*) was an old acquaintance therefore acting purely in good faith and upon the request of the above distant relative the present petitioner deposited the requisite fee and got the receipt issued. The learned counsel has reiterated that since the temple priest was known to the petitioner therefore the said receipt was issued in the name of the petitioner.

6. The learned counsel for the petitioner has submitted that the allegations levelled against the petitioner are manifestly vague and do not constitute any offence. It has been further argued by the learned counsel that if the allegations against the petitioner are taken to be true as a whole, even then the evidence collected during the course of investigation and the materials available on record do not disclose commission of any offence as has been alleged. The learned counsel for the petitioner has laid considerable emphasis on the fact that during the course of investigation the temple priest (*pujari*) had merely stated that the petitioner got the receipt from the ashram authorities, beyond this there is nothing to even remotely suggest that the petitioner conspired in order to commit the offences as alleged by the informant. The learned counsel has pointed that the informant or her father were evidently not a witness to the said



marriage.

7. Heard the parties and perused material available on record.

8. The Hon'ble Supreme Court in the case of ***Abhishek vs. State of Madhya Pradesh*** reported as **2023 SCC OnLine SC 1083** has held as follows -

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 and others vs. State of Bihar and others [(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 and another vs. State of Jharkhand and another* [(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 and another vs. 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 and others vs. State of U.P. and others* (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 Bhajan Lal (supra), 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.'

9. The petitioner is the maternal uncle (*mausa*) of the



one Mintu Kumari with whom the husband of the informant (O.P. no2) had solemnised a second marriage. Taking into account the factual position that the petitioner is a distant family relative who does not have any day-to-day relations and was also not involved in any family affairs of the alleged second wife of the husband of the informant in any proximate capacity therefore relying on the law laid down by the Hon'ble Supreme Court in *Abhishek (Supra)* the order of dismissal of discharge is not sustainable and is therefore quashed.

10. For the forgoing reasons and discussions, this application is allowed.

11. Accordingly, the order dated 13.06.2022 passed by the Judicial Magistrate, 1st Class, Danapur, Patna is set aside.

12. So far as the trial against the main accused persons are concerned, it is directed that the same shall be expedited.

(Sandeep Kumar, J)

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