

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36949 of 2025

Arising Out of PS. Case No.-219 Year-2023 Thana- CHHATAUNI District- East Champaran

Kundan Kumar @ Kundan Kumar Tiwari, aged about 27 years, male, Son of Late Pukar Tiwari, Resident of Village - Bara Bariyarpur, P.S. - Chhatauni, District - East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Anjali Kumari Daughter of Shyamsundar Mishra Village- Bade Bariyarpur, opposite of mani Hospital Ps- Chhatauni, Dist- East Champaran

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Adarsh Ranjan, Advocate
For the O.P. No. 2	:	Mr. Dilip Kumar Tandon, Advocate Mr. Prateek Tandon, Advocate Mr. Rohit Ranjan, Advocate
For the State	:	Mr. Mritunjay Kumar Nirala, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 19-11-2025

Heard learned counsel appearing on behalf of the petitioner; learned counsel for the opposite party no. 2 and learned APP for the State.

2. The petitioner has preferred application under Section 528 of BNSS for quashing the order taking cognizance dated 26.04.2024 passed by the learned C.J.M., East Champaran, Motihari in Chhatauni P.S. Case No. 219 of 2023, by which learned C.J.M., East Champaran, Motihari has taken cognizance of offence under Sections 341, 323, 498(a), 504, 34 of the Indian Penal Code and Sections 3 and 4 of D.P. Act.

3. The prosecution story, in brief, is that the marriage



of the informant (O.P. No. 2) was solemnized with the petitioner on 30.04.2021 according to the Hindu rites and customs. Out of the wedlock, the petitioner and informant have been blessed with a girl child. After marriage, the petitioner and his family members started demanding *Maruti* car as dowry and due to non-fulfillment of the same, they had assaulted the informant and ousted her from her matrimonial house along with her daughter.

4. Learned counsel appearing on behalf of the opposite party no. 2 informs that the girl child is aged about three years and because of the fight between the husband and wife, the petitioner (husband) is not taking proper care of his minor girl child and opposite party no. 2, who has been kicked out of her matrimonial house, is not in a position to even give proper nutrition to her child. He further submitted that at least the petitioner should take care of his minor girl child being the biological father.

5. Learned counsel appearing on behalf of the petitioner informs that petitioner (husband), who is father of minor girl child, is ready to take care of his minor girl child and he will provide the minor girl child proper nutrition for her overall growth. He further submitted petitioner will also make



payment of school fee regularly once she is admitted in any premium school in Motihari.

6. Learned counsel further submitted that marriage is a sacred ceremony but little matrimonial skirmish suddenly erupts into hatred, in such circumstances, the Court must allow the parties to ponder so that they can reconcile their dispute outside the court. He further submitted that matter be referred for mediation.

7. Learned counsel for the opposite party no. 2 and learned APP are also of the same view and jointly submitted that opportunity shall be given to the parties to reconcile their dispute amicably.

8. The parties have agreed to appear before the learned District Court at 10:30 A.M. on 17.12.2025.

9. Heard the parties.

10. In peculiar facts of the case and considering the background circumstances of the welfare of the child on the touchstone of principle of *parens patriae* jurisdiction as the minor is within the jurisdiction of the Court, the Apex Court found it in the case of *Howarth v. Northcott*, 152 Conn 460 that the welfare of the child is of paramount consideration of the Court. I find it apt to reproduce the observations made by the



Apex Court in the aforesaid case, which is as under:

"In habeas corpus proceedings to determine child custody, the jurisdiction exercise by the Court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patrie, for the protection of its infant ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity." (emphasis supplied)

It was further observed;

"The employment of the forms of habeas corpus in a child custody case is not for the purpose of testing the legality of a confinement or restraint as contemplated by the ancient common law writ, or by statute, but the primary purpose is to furnish a means by which the court, in the exercise of its judicial discretion, may determine what is best for the welfare of the child, and the decision is reached by a consideration of the equities involved in the welfare of the child, against which the legal rights of no one, including the parents, are allowed to militate. It was also indicated that ordinarily, the basis for issuance of a writ of habeas corpus is an illegal detention; but in the case of such a writ sued out for the detention of a child, the law is concerned not so much with the illegality of the detention as with the welfare of the child."

11. In this regard, it would be also gainful to reproduce the observation made by the Apex Court in ***Mausami Moita Ganguli V. Jayant Ganguli*** reported in **(2008) 7 SCC 673** in paragraph nos. 19 to 21 and 23 to 26:

"19. The principle of law in relation to the custody of a minor child are well settled. It is trite that while determining the question as to which parent the care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. Indubitably, the provisions of the law pertaining to the custody of a child contained in either the Guardians and Wards Act, 1890 (Section 17) or the Hindu Minority and Guardianship Act, 1956 (Section 13) also hold out the welfare of the child as a predominant consideration. In fact, no statute, on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor."

"20. The question of welfare of the minor child



has again to be considered in the background of the relevant facts and circumstances. Each case has to be decided on its own facts and other decided cases can hardly serve as binding precedents in so far as the factual aspects of the case are concerned. It is, no doubt, true that father is presumed by the statutes to be better suited to look after the welfare of the child, being normally the working member and head of the family, yet in each case the court has to see primarily to the welfare of the child in determining the question of his or her custody. Better financial resources of either of the parents or their love for the child may be one relevant considerations but cannot be the sole determining factor for the custody of the child. It is here that a heavy duty is cast on the court to exercise its judicial discretion judiciously in the background of all the relevant facts and circumstance, bearing in mind the welfare of the child as the paramount consideration.”

21. *In Rosy Jacob v. Jacob A. Chakramakkal reported in (1973) 1 SCC 840, a three-Judge Bench of the Apex Court in a rather curt language had observed that the controlling factor governing the custody of the child would be its welfare and not the rights of the parent:*

“15. ... The children are not mere chattels: nor are they mere playthings for their parents. Absolute right of the parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human being so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them.”

“23. Having bestowed our anxious consideration to the material on record and the observation made by the courts below, we are of the view that in the present case there is no ground to upset the judgment and order of the High Court. There is nothing on record to suggest that the welfare of the child is in any way in peril in the hands of the father. In our opinion, the stability and security of the child is also essential ingredient for a full development of child's talent and personality. As noted above, the appellant is a teacher, now employed in a school at Panipat, where she had shifted from Chandigarh some time back. Earlier, she was teaching in some school at Calcutta.

Admittedly, she is living alone. Except for a very short duration when he was with the appellant, Master Satyajeet has been living and studying in Allahabad in a good school and is stated to have his small group of friends there. At Panipat, it would be an entirely new environment for him as compared to Allahabad.”



“25. It is also significant to note that during the course of hearing on one of the dates, when we had not yet interviewed Satyajeet, we had suggested that it would be better if the child could stay with his mother for some more time. However, upon hearing us, he started crying and whining and, showed reluctance to go with the mother.”

Watching his reaction, we dropped the proposal.

“26. Under these circumstances and bearing in mind the paramount consideration of the welfare of the child, we are convinced that the child’s interest and welfare will be best served if he continues to be in the custody of the father; In our opinion, for the present, it is not desirable to disturb the custody of master Satyajeet and, therefore, the order of the High Court giving his exclusive custody to the father with visitation rights to the mother deserves to be maintained. We feel that the visitation rights to the appellant by the High Court, as noted above, also do not require any modification.”

We, therefore, affirm the order and the afore-extracted direction given by the High Court. It will, however, be open to the parties to move this Court for modification of this order or for seeking any direction regarding the custody and well- being of the child, if there is any change in the circumstances.”

12. In the case of **Gaurav Nagpal v. Sumedha Nagpal** reported in **(2009) 1 SCC 42**, the Apex Court in paragraph 50 has held as follows:-

"50. When the Court is confronted with conflicting demands made by the parents, each time it has to justify the demands. The Court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The Court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor."

13. Being aware of the role of the Court becomes *parens patriae*, I direct the petitioner (husband), who is working as medical representative, to take care of his child and make payment of Rs. 5,000/- per month to the opposite party no. 2 on



account of nutrition and overall growth of the girl child, who is aged about three years.

14. The parties have mutually agreed to appear on 17.12.2025 before the learned District Court. The matrimonial dispute is not an offense against the society rather a matrimonial dispute is a private conflict between spouses and does not inherently constitute an offence against society. However, a false case can have a disastrous consequence in absence of any criminal content. The personal dispute cannot call for a criminal offence. In such situation, continuation of the proceeding would amount to abuse of process of law leading to vexatious proceeding against the petitioner.

15. In this regard, the Apex Court in the case of **B.S. Joshi v. State of Haryana**, reported in, **(2003) 4 SCC 675**, in paragraph nos. 12 and 13 has held as under:-

“ 12. The special features in such matrimonial matters are evident. It becomes the duty of the court to encourage genuine settlements of matrimonial disputes.

*13. The observations made by this Court, though in a slightly different context, in **G.V. Rao v. L.H.V. Prasad [(2000) 3 SCC 693 : 2000 SCC (Cri) 733]** are very apt for determining the approach required to be kept in view in a matrimonial dispute by the courts. It was said that there has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial*



skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their “cases” in different courts.

16. In the present case, both the parties have agreed to settle the dispute outside the Court and they have willingly desired to appear before the learned District Court on 17.12.2025 at 10:30 AM.

17. Learned District Court is directed to take necessary steps to refer the matter before the learned Mediator of the District Mediation Center.

18. Learned Mediator of the District Mediation Center concerned shall make his/her best efforts to settle the dispute between the parties amicably and thereafter submit his/her report before the concerned learned District Court, well within a period of four months, till then, no coercive action shall be taken against the petitioner in connection with the aforesaid case.



19. In case, the parties resolve their dispute amicably, then the proceeding is required to be dropped in light of the law laid down by the Apex Court as referred hereinabove.

20. In case of failure on the part of the petitioner to appear on 17.12.2025 before the learned District Court or any date fixed by the learned Mediator, the interim protection granted to the petitioner shall automatically lose its force.

21. In case, it is deliberate on the part of the petitioner and he fails to reconcile, then in that case, the learned District Court shall proceed with the trial. In case, it is deliberate on the part of the opposite party no.2 to reconcile, then in that case, the interim protection granted to the petitioner shall continue and the trial shall proceed in accordance with law.

22. Accordingly, the present quashing application stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	21.11.2025
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