

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37409 of 2019

Arising Out of PS. Case No.-1250 Year-2014 Thana- GAYA COMPLAINT CASE District-
Gaya

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1. Bhagwat Pathak Son of Late Madhusudan Pathak Resident of Bara Bazar, Subhash Marg Near Punjab National Bank Barkagaon, P.S.- Sadar, District- Hazaribagh (Jharkhand).
 2. Rakhi Pathak Daughter of Bhagwat Pathak Resident of Bara Bazar, Subhash Marg Near Punjab National Bank Barkagaon, P.S.- Sadar, District- Hazaribagh (Jharkhand).
 3. Rekha Mishra Wife of Sanjiv Mishra and daughter of Bhagwat Pathak Resident of Basant Colony, P.S.- Rourkela, District- Rourkela (Odisha).
 4. Santosh Pathak Son of Bhagwat Pathak Resident of Bara Bazar, Subhash Marg Near Punjab National Bank Barkagaon, P.S.- Sadar, District- Hazaribagh (Jharkhand).
 5. Ajit Kumar Pathak Son of Krishna Kumar Pathak Resident of Visheshwar Nursing Home Barkagaon Road, P.S.- Sadar, District- Hazaribagh (Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sarika Pathak Wife of Santosh Pathak Resident of Bara Bazar, Subhash Marg Near Punjab National Bank Barkagaon, P.S.- Sadar, District- Hazaribagh (Jharkhand). At present residing at West Nootan Nagar, P.S.- Civil Lines, District- Gaya.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Shivendra Prasad, Adv.
	:	Ms. Chandni Kumari, Adv.
For the Opposite Party/s	:	Mr. Tabish Shaffuddin, Adv.
For the State	:	Mr. Nirmal Kumar Sinha, APP.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

10 13-02-2025 The instant petition has been filed under Section 482 of the Code of Criminal Procedure with a prayer to quash the order dated 23.01.2019 passed by learned S.D.J.M., Gaya in Complaint Case No. 1250 of 2014 whereby and whereunder

cognizance of the offences under Section 498(A) of the Indian Penal Code (in short I.P.C.) and Sections 3 & 4 of Dowry Prohibition Act (in short D.P. Act) has been taken against the petitioners.

2. Mr. Shivendra Prasad, learned counsel appearing for the petitioners submits that petitioner no. 1, Bhagwat Pathak, is no more and his prayer has been withdrawn from this petition. Now, the instant petition is to be decided in respect of other petitioners. He further submits that the petitioner nos. 2 and 3 are married sisters of the husband of the O.P. No. 2, petitioner no. 4 is the husband of the O.P. No. 2 and petitioner no. 5 is cousin elder brother of the husband of the O.P. No. 2. In the entire complaint, there is no specific allegation with regard to the alleged demand of Rs. 25 lakhs and the allegation of making sarcastic and taunting remarks upon the complainant by the petitioners is general and omnibus and the paragraph no. 2 of the complaint clearly shows that after the marriage, the complainant stayed at her sasural only for 15 days in three visiting terms, which shows that complainant had stayed at her sasural for very short time. As per the allegation made by the complainant, the petitioners forcefully administered poison to the complainant, as a result of which she was admitted to Sadar

Hospital, Hazaribagh, but the said allegation is also general and omnibus against the petitioner nos. 2 to 5. Further, no any document particularly with regard to the medical treatment of the complainant at Sadar Hospital, Hazaribagh was filed with the complaint before the inquiry Court, which could have been easily produced if the complainant remained under treatment at the said hospital. He further submits that the husband of the complainant is younger brother of the petitioner nos. 2 and 3, who were married during the relevant period of occurrence and both were residing in their respective sasural and petitioner no. 5 is cousin brother of the petitioner no. 4, who has no concern with the family affairs of the complainant's husband. It is further submitted that if the petitioners are subjected to face trial for the offences under Section 498(A) of I.P.C. and Sections 3 and 4 of the D.P. Act for the allegations which are completely general and omnibus, it would be complete harassment to them. In support of these submissions learned counsel has placed reliance upon the following judgments of the Hon'ble Apex Court of which details are being given below with reproducing the relevant paragraphs:-

(i)- *Abhishek V. State of Madhya Pradesh* in *Criminal Appeal No. 1456 of 2015* and the relevant Paragraph

No. 19 upon which reliance has been placed is as under:-

19. The most significant aspect to be taken note of presently is that Bhawna admittedly parted ways with her matrimonial home and her in-laws in February, 2009, be it voluntarily or otherwise, but she did not choose to make a complaint against them in relation to dowry harassment till the year 2013. Surprisingly, FIR No. 56 dated 09.02.2013 records that the occurrence of the offence was from 02.07.2007 to 05.02.2013, but no allegations were made by Bhawna against the appellants after she left her matrimonial home in February, 2009. Significantly, Bhawna got married to Nimish on 02.07.2007 at Indore and went to Mumbai with him on 08.07.2007. Her interaction with her in-laws thereafter seems to have been only during festivals and is stated to be about 3 or 4 times. Sourabh, an architect, was stationed at Delhi since the year 2007 and no specific allegation was ever made against him by Bhawna. In fact, she merely made a general allegation to the effect that he also tortured her mentally and physically for dowry. No specific instance was cited by her in that regard or as to how he subjected her to such harassment from Delhi. Similarly, Abhishek became a judicial

officer 6 or 7 months after her marriage and seems to have had no occasion to be with Bhawna and Nimish at Mumbai. His exposure to her was only when she came to visit her in-laws during festivals. Surprisingly, Bhawna alleges that at the time of his own marriage, Abhishek demanded that Bhawna and her parents should provide him with a car and 1.2 lakhs in cash. Why he would make such a demand for dowry, even if he was inclined to commit such an illegality, from his sister-in-law at the time of his own marriage is rather incongruous and difficult to comprehend. Further, the fact that Bhawna confessed to making a vicious complaint against Abhishek to the High Court clearly shows that her motives were not clean insofar as her brother-in-law, Abhishek, is concerned, and she clearly wanted to wreak vengeance against her in-laws. The allegation levelled by Bhawna against her mother-in-law, Kusum Lata, with regard to how she taunted her when she wore a maxi is wholly insufficient to constitute cruelty in terms of Section 498A IPC.

(ii)-*Kahkashan Kausar @ Sonam & Ors. V. State of Bihar & Ors.* in *Criminal Appeal No. 195 of 2022* and the relevant Paragraphs Nos. 12, 13 and 22 upon which reliance has been placed are as under:-

12. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of Section 498-AIPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid State intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as Section 498-AIPC as instruments to settle personal scores against the husband and his relatives.

13. This Court in its judgment in Rajesh Sharma v. State of U.P. [Rajesh Sharma v. State of U.P., (2018) 10 SCC 472 : (2019) 1 SCC (Cri) 301] , has observed : (SCC pp. 478-79, para 14) “14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of Act 46 of 1983. The expression “cruelty” in Section 498-A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or

physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. [Explanation to Section 498-A.] It is a matter of serious concern that large number of cases continue to be filed under Section 498-A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualised. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement.”

22. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the appellant-accused, it would be unjust if the appellants are forced to go through the tribulations of a trial i.e. general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this Court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must, therefore, be discouraged.

(iii)-***Dara Lakshmi Narayana & Ors. V. State of Telangana & Anr.*** in ***Criminal Appeal No. 5199 of 2024*** and the relevant Paragraphs Nos. 25 and 31 upon which reliance has been placed are as under:-

25. A mere reference to the names of family members in a criminal case arising out of a matrimonial dispute, without specific allegations indicating their active involvement should be nipped in the bud. It is a well-recognised fact, borne out of judicial experience, that there is often a tendency to implicate all the members of the husband's family when domestic disputes arise out of a matrimonial discord. Such generalised and sweeping accusations unsupported by concrete evidence or particularised allegations cannot form the basis for criminal prosecution. Courts must exercise caution in such cases to prevent misuse of legal provisions and the legal process and avoid unnecessary harassment of innocent family members. In the present case, appellant Nos. 2 to 6, who are the members of the family of appellant No. 1 have been living in different cities and have not resided in the matrimonial house of appellant No. 1 and respondent No. 2 herein. Hence, they cannot be dragged into criminal prosecution and the same would be an abuse of the process of the

law in the absence of specific allegations made against each of them.

31. Further, this Court in Preeti Gupta v. State of Jharkhand (2010) 7 SCC 667 held 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. The allegations of harassment by the husband's close relatives who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinized with great care and circumspection.

(iv)-Mamidi Anil Kumar Reddy V. State of Andhra Pradesh & Anr. in Criminal Appeal No(s). 758 of 2024 and the relevant Paragraphs Nos. 14, 16 and 17 upon which reliance has been placed are as under:-

14. In the considered opinion of this Court, there is significant merit in the submissions of the Learned Counsel for the Appellants. A bare perusal of the complaint, statement of witnesses' and the charge-sheet shows that the allegations against the Appellants are wholly general and omnibus in nature; even if they are taken in their

entirety, they do not prima facie make out a case against the Appellants. The material on record neither discloses any particulars of the offences alleged nor discloses the specific role/allegations assigned to any of the Appellants in the commission of the offences.

16. More recently, this Court in Mahmood Ali v. State of U.P.³ while considering the principles applicable to the exercise of jurisdiction u/s. 482 CrPC, observed as follows: “12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or 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 for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure

that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just 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. 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 try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs

assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

17. Considering the dicta in Mahmood Ali (supra), we find that the High Court in this case has failed to exercise due care and has mechanically permitted the criminal proceedings to continue despite specifically finding that the allegations are general and omnibus in nature. The Appellants herein approached the High Court on inter alia grounds that the proceedings were re-initiated on vexatious grounds and even highlighted the commencement of divorce proceedings by Respondent No. 2. In these peculiar circumstances, the High Court had a duty to consider the allegations with great care and circumspection so as to protect against the danger of unjust prosecution.

3. On the other hand Mr. Tabish Shaffuddin, learned counsel appearing for the O.P. No. 2, complainant, vehemently opposes the instant petition and submits that the marriage of the complainant took place in the year 2013 and within one year from the marriage, she had to resort to legal remedy on account of being mentally and physically tortured by the petitioners. Though in the complaint petition, there is no

specific allegation against the petitioners except one incident, but the same can not be a ground to exonerate the petitioners from the entire criminal liability at the initial stage. However, in respect of the incident of administering poison, which was committed by the petitioners with the complainant, specific detail has been given in the complaint. It is further submitted that the complainant was mentally and physically tortured by the petitioners on account of non-fulfillment of Rs. 25 lakhs which was demanded by the petitioners. The learned counsel has placed reliance on the judgment of the Hon'ble Apex Court passed in the case of ***Taramani Parakh vs State of M.P. & Ors.*** in Criminal Appeal No. 456 of 2015 and the relevant Paragraph No. 9 upon which the reliance has been placed, is being reproduced as under:-

9. Learned counsel for the appellant submitted that it was the conduct of the accused on account of their not being satisfied with the dowry given and the inability of the appellant's family to meet such demands that the appellant was forced to leave the matrimonial home. The appellant was keen to continue in the matrimonial home and to return home even after being forced to leave but the accused refused to take her back. The husband has filed a divorce

petition which is without any legal basis. The appellant lodged the complaint after filing of the divorce petition for the reason that the appellant had earlier remained hopeful that the matter may be amicably settled. It was only after she lost all hopes that she had to initiate criminal proceedings in respect of cruelty meted out to her. The High Court in proceedings under Section 482 could not quash the proceedings merely with the observation that the allegations were omnibus. The power of quashing could be exercised sparingly and only if no case was made out from the allegations taken as correct or where the complaint was absurd or legally not maintainable. In the FIR, the appellant has specifically mentioned that the accused harassed her for dowry by taunting her and beating her. It was already mentioned that she was deprived of her belongings by the accused.

4. Heard both the sides, perused the order impugned and other relevant materials. It is an admitted position that after the marriage the complainant stayed at her sasural only for a few days, though she revealed some incidences of cruelty allegedly committed by the petitioners with her, but failed to give the details of the specific role of the petitioner nos. 2, 3

and 5 and the allegations made by her against these petitioners are completely general and omnibus and further the petitioner nos. 2 and 3 are said to be the married sisters of the husband of the complainant and they have taken the plea that at the time of marriage of the complainant, both were residing in their sasural and the said plea has not been refuted by the O.P. No. 2's counsel and the petitioner no. 5 is said to be the cousin brother of complainant's husband and against him also there is no specific allegation in the complaint and there is no whisper in the entire complaint regarding the regular stay of petitioner no. 5 with the husband of the complainant during the relevant period. The allegations made by the complainant against the petitioner nos. 2, 3 and 5 appear to be absurd and not believable, so in view of this position as well as considering the principles laid down by the Hon'ble Apex Court in the cases of *Abhishek V State of Madhya Pradesh, Kahkashan Kausar @ Sonam & Ors. V. State of Bihar & Ors. , Dara Lakshmi Narayana & Ors. V. State of Telangana & Anr.* and *Mamidi Anil Kumar Reddy V. State of Andhra Pradesh & Anr.* (supra), this Court finds substance in the prayer made by the petitioner nos. 2, 3 and 5, hence, the order impugned taking cognizance of the alleged offences against them is hereby quashed to this extent

only. However, there is sufficient materials against the petitioner no. 4 to proceed with the alleged offences against him, so in respect of him the order impugned is upheld.

5. Accordingly, the instant petition stands partly allowed to the aforesaid extent.

(Shailendra Singh, J.)

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