

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40696 of 2022

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

Mintu Kumari D/O Sri Surendra Singh Resident of village- Kansara, P.S.-
Karpi, District- Arwal

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Usha Kumari Singh, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 26-06-2025 Heard learned counsel for the petitioner; learned APP
for the State and learned counsel for the informant.

2. The present application has been filed for quashing the order dated 13.06.2022 in Rupaspur P.S. Case No. 70 of 2015 passed by the Judicial Magistrate, 1st Class, Danapur by which the discharge application under Section 239 of the Cr. P.C. has been rejected.

3. The brief facts relevant for the present application is that on 20.03.2015, the informant-Sindhu Kumari lodged a written complaint before the Officer-in-Charge, Rupaspur, alleging that she is the legally wedded wife of one Ashutosh Kumar, and that her marriage to the aforesaid Ashutosh Kumar was solemnized on 27.02.2009. It is further stated that the couple has a daughter named Anushka, who was born on



21.02.2010, and was about five years old at the time of filing the complaint. The informant thereafter states that her husband, Ashutosh Kumar, was initially posted as Programme Officer (MGNREGA) at Shahpur Block, Bhojpur District, and later was transferred to Muzaffarpur. The informant alleges that her husband along with his mother Usha Devi and sisters Juli Kumari and Nidhi Kumari, subjected her to constant threats regarding second marriage of her husband. It is also alleged that due to the continued harassment, the informant was forced out of her matrimonial home and is now living with her parents in Ram Jaipal Nagar, Rupaspur.

4. The informant thereafter alleges that on 18.03.2015, her father discovered that Ashutosh Kumar had allegedly entered into a second illegal marriage with one Mintu Kumari, petitioner herein, on 02.12.2014 at Hanumangarhi Ashram, Mahuli, District Bhojpur. The family members of the informant procured the marriage receipt and register from the aforesaid *ashram* where the alleged second marriage was solemnized. The informant furthermore alleges that the second illegal marriage was carried out with the support of her mother-in-law Usha Devi, father-in-law Bachcha Sharma and one Nagendra Kumar who is the *Mausa* (uncle) of Mintu Kumari,



and is currently posted as an assistant teacher at Middle School, Saraiya, Barhara Block, Bhojpur. It is stated that both Mintu Kumari and Nagendra Kumar reside in Ara at the house of one Anup Singh.

5. The learned counsel for the petitioner has submitted that the allegations made against the petitioner are false and fabricated and that no such occurrence of marriage has taken place. The learned counsel for the petitioner had pointed that initially the F.I.R was lodged under sections 494 read with section 34 of the Indian Penal Code, however during the investigation the I.O. of the case had added section 498-A of Indian Penal Code as well and has accordingly submitted the charge-sheet, based on which the magistrate took cognizance against the petitioner and other co-accused persons.

6. The learned counsel for the petitioner thereafter submits that the petitioner had preferred a discharge petition under section 239 of the Criminal Procedure Code, 1973, which was rejected by the Magistrate vide order dated 13.06.2022 without properly appreciating the law and facts at hand. Subsequently, the Petitioner had thereafter preferred a revision petitioner before the Learned Sessions Judge, Patna wherein vide order dated 17.10.2017, the matter was remanded back to



the court to pass a reasoned order. The learned counsel for the petitioner submits that from the perusal of the even the latter order shows that it was again rejected which was again unreasoned.

7. Furthermore, it was submitted that the allegation of the informant that the Petitioner got married with the co accused Ashutosh Kumar and the same is strongly denied.

8. Moreover, it was submitted by on behalf of the petitioner that from the complaint petition, it is apparent that the informant has not resided at her matrimonial home since 2012 and that the present F.I.R was lodged on 20-03-2015 which is clearly an afterthought. The learned counsel submits that it is evident from perusal of the F.I.R that no *prima facie* case is made out against the petitioner under section 494, 498(A) read with 34 of Indian Penal Code and the issuance of processes against the petitioner is a misuse of the process of law.

9. It is lastly submitted by the learned counsel for the petitioner that the rigors of section as charged would not be attracted against the petitioner being the wife of the Ashutosh Kumar. It is specifically contented by the earned counsel for the petitioner that section 498-A are only applicable against the husband or the family members of the husband of the victim.



10. It was also submitted that from perusal of the F.I.R it transpires that the complainant has roped-in all the relatives of the husband with ulterior motive and *malafide* intention which should not be encouraged as the law is also squarely settled by this Court as well as the Hon'ble Supreme Court.

11. The learned counsel has vehemently argued that the allegations made against the petitioner in the F.I.R are totally bald, concocted and malicious with not even a shred of evidence and therefore, its continuance would be travesty of justice.

12. I have heard the parties and perused the materials available on record.

13. It has been alleged that the petitioner is the second wife and is accused of torturing the complainant/ informant. The petitioner denies the marriage and submits that she is not the second wife.

14. The Hon'ble Supreme Court in the case of **State of Gujarat v. Dilipsinh Kishorsinh Rao**, reported as **(2023) 17 SCC 688 : 2023 SCC OnLine SC 1294**

10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the



existence of the ingredients necessary of the offence alleged.

11. This Court in State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] adverting to the earlier propositions of law laid down on this subject has held : (SCC pp. 721-22, para 29) “29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has



committed the offence. The law does not permit a mini trial at this stage.

12. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227CrPC is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

13. The primary consideration at the stage of framing of charge is the test of existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in State of Maharashtra v. Som Nath Thapa [State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 : 1996 SCC (Cri) 820] and State of M.P. v. Mohanlal Soni [State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338 : 2000 SCC (Cri) 1110] has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

15. Therefore it is settled law that at the stage of discharge, the defence of the petitioner cannot be considered.



16. The Court below has found a *prima facie* case for trial and it would be improper for this Court to conduct a mini-trial to ascertain the veracity of the disputed facts.

17. Accordingly, the application stands dismissed.

(Sandeep Kumar, J)

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