

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.46284 of 2025

Arising Out of PS. Case No.-37 Year-2023 Thana- MAHILA PS District- Gopalganj

Ahmad Raza @ Ahmad Raja aged about 28 years son of Ishaq Ahmad @ Md. Ishaque Male Resident of village- Keshavpur Korar, P.S- Thawe, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Heena Kausar W/O Ahmad Raza R/O Village- Keshavpur Korar, P.S- Thawe, Distt.- Gopalganj. At present D/O Ijararuddin R/O Village- Semra Purab Tola, P.S- Gopalganj Town, Dist.- Gopalganj.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Umesh Kumar Singh, Advocate

For the Opposite Party/s : Mr. Navin Kumar Pandey, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT**

Date : 18-11-2025

Heard learned counsel appearing on behalf of the petitioners and learned APP for the State.

2. The petitioner has preferred application under Section 528 of BNSS for quashing the order taking cognizance dated 05.12.2024 passed by the learned Sub Divisional Magistrate, Gopalganj in Gopalganj Mahila P.S. Case No.37 of 2023 (PTN No. 3996 of 2023, Tr. No. 2318 of 2025) by which learned Sub Divisional Magistrate, Gopalganj has taken cognizance of offence against the petitioner under Sections 341,



323, 498 (A), 504 and 34 of the Indian Penal Code and Section 3/4 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 in the year 2019. At the time of marriage, the father of the O.P. No. 2 had given Rs. 2 lakh cash, ornaments and other household articles to the petitioner side, but the father of the petitioner was not satisfied with these things and had demanded Scorpio at the time of adieu, however, after the advice of well-wisher, her *bidai* was performed and the informant/O.P. No. 2 came to her matrimonial house. Out of the wedlock, the informant/opposite party no. 2 was blessed with a girl child. After some time, due to alleged non-fulfillment of demand of Scorpio, the petitioner and his family members started torturing the informant and ousted her from her matrimonial house. Aggrieved by the said act, the informant/O.P. No. 2, has filed the FIR on 14.09.2023 under Sections 341, 342, 323, 498(A), 406, 504, 506/34 of the Indian Penal Code and Sections 3/4 of the DP Act against the petitioner and his family member.

4. Learned counsel appearing on behalf of the petitioner submitted that petitioner is the husband of opposite party no. 2 and the instances show that he is willing to live



along with the opposite party no. 2 with full dignity and honour. In these background, learned counsel submitted that facing criminal prosecution will be vexatious in nature and has relied upon the judgment passed by the Apex Court in the case of ***G.V. Rao vs L.H.V. Prasad*** reported in ***(2000) 3 SCC 693***, ***Preeti Gupta vs. State of Jharkhand*** reported in ***(2010) 7 SCC 667*** and ***Dara Lakshmi Narayana vs. State of Telangana*** reported in ***(2025) 3 SCC 735***.

5. Learned counsel further submitted that marriage is a sacred ceremony but little matrimonial skirmish suddenly erupts into hatred and the parties ponder to reconcile their dispute outside the court.

6. Learned counsel further submitted that the petitioner, who is the husband of the O.P. No. 2, has agreed to settle the dispute outside the Court and he has willingly desired to appear before the learned District Court on 17.12.2025 at 10:30 AM.

7. *Per contra*, learned counsel for the State submitted that the opposite party no.2 is being harassed by the petitioner and, as such, the present quashing application is fit to be dismissed. He, however, submitted that a chance be given to the parties to settle their dispute amicably.



8. Heard the parties.

9. 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.

10. In this regard, I find it apt to reproduce paragraph no. 12 of the case of **G.V. Rao (Supra)**, in which, the Apex Court has held *inter alia* as follows:

"12. 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."



11. 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.*

12. The Apex Court in the case of **Preeti Gupta (Supra)** in paragraph no. 35 has held *inter alia* as follows:

"35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean



task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. 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 of husband's close relations 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 scrutinised with great care and circumspection."

13. In the present case, the petitioner, who is husband of the O.P. No. 2, has agreed to settle the dispute outside the Court and he has willingly desired to appear before the learned District Court on 17.12.2025 at 10:30 AM.

14. Learned District Court is directed to take necessary steps to issue notices to the respective parties and upon their appearance, refer the matter before the learned Mediator of the District Mediation Center by fixing a date for appearance of the parties.

15. 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.

16. 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.

17. 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.

18. 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.

19. Before parting with the order, I find it proper to direct the learned District Court to get informed that he has to play the role of *parens patriae* considering the fact that the husband of opposite party no.2 is not taking care of the two years old girl child born out of the wedlock, nor he is supporting financially or showing his love and affection. He must exercise his jurisdiction to consider for the welfare of the child which is paramount till the parties resolve their dispute in accordance



with the law.

20. 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.”



21. 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."

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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