

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.55987 of 2021

Arising Out of PS. Case No.-297 Year-2009 Thana- SUPAUL District- Supaul

RAMAN KUMAR SINGH SON OF MAHNAND PRASAD SINGH
RESIDENT OF VILLAGE- PATORI, P.S. BIHRA, DISTRICT- SAHARSA

... .. Petitioner/s

Versus

1. The State of Bihar BIHAR
2. RINKI KUMARI WIFE OF RAMAN KUMAR SINGH DAUGHTER OF
SRI BHAWAN SINGH RESIDENT OF VILLAGE- PARSARMA, P.S.
AND DISTRICT- SUPAUL

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Alok Kumar Sinha, Sr. Advocate Mr. Bholu Kumar
For the Opposite Party/s	:	Mr. Ashok Kumar Singh
For the State	:	Mr. Shyam Kumar Singh

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

- 3 20-03-2025 Heard learned Senior Counsel for the petitioner, the

learned Additional Public Prosecutor appearing on behalf of the

State and the learned Counsel for the Opposite Party No. 2.

2. The present application has been preferred by the petitioner-husband under section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.' for short) for quashing the impugned order dated 10.08.2021 passed in Cr. Rev. No. 97 of 2017. The present case emanates from Supaul P.S. Case No. 297/2009 registered under sections 323, 498A read with section 34 of the Indian Penal Code, 1860 and also under sections 3 and 4 of the Dowry Prohibition Act.

3. The prosecution story relevant for the purpose of the present application in brief is that, the informant-wife (O.P. no.2 herein), Rinku Kumari (Opposite Party no.2) had filed a



written complaint before the police on 14.10.2009. The informant had stated therein that she was married to the petitioner around four years therefrom according to the Hindu rites and rituals which was solemnized at the house of the father of the informant. The informant has further stated that in her marriage with the present petitioner, her father had spent according to his capacity and gifted jewelry, clothes, utensils, items of furniture etc. and the father of the informant had also gifted gold necklace chain, ring, motorcycle and clothes to the petitioner-husband. The informant next states in the written application to the police that after her marriage she went to stay at her matrimonial house at Panchgachiya and thereafter she was blessed with a son from the wedlock who was aged two years at the time of the informant making the aforesaid complaint. The informant alleges that for about one and a half years, her husband, father-in-law, mother-in-law, her three sisters-in-law and her *nandosi* had conspired together to demanded rupees two lakhs from her father as dowry. It is further alleged that when the informant conveyed the inability of her father to fulfil their demands, the above-named persons started to torture the informant by beating her, asking her to leave her matrimonial house, stop her from eating and even



avoided medical treatment to the informant when she fell ill. It is stated that upon learning about the mistreatment of his daughter, the father came to mediate whereupon the in-laws maintained cordial relations for some time. The informant next alleges that on 14.10.2009 at around 05:00 PM, the above-named persons started torturing and threatening the informant and asked the informant to leave her matrimonial house. It is alleged that when the informant resisted, the above-named persons started to beat the informant and the mother-in-law handed over kerosene oil to the accused Anjali Kumari and the said accused Anjali Kumari poured the kerosene oil on the informant and accused Gudiya Kumari started to light the match stick with an intention to ignite fire. It is stated that in the meanwhile neighbours assembled and snatched the lighted matchstick which saved the life of the informant. It is thereafter alleged that the informant was thrown out of her matrimonial house. It is furthermore alleged that when the informant demanded the jewelry, clothes etc. gifted by her father during marriage, her husband and father-in-law threatened to kill the informant. The informant lastly stated that upon being thrown out of her matrimonial house the informant along with her child reached the house of her father and thereafter informed the



jurisdictional police.

4. Based upon the written complaint, Supaul P.S. Case 297 of 2009 was registered on 14.10.2009 was registered under sections 498A, 323 read with section 34 of the IPC and sections 3 and 4 of the Dowry Prohibition Act. Upon investigation the police submitted charge sheet and the learned Court vide order dated 25.07.2011 took cognizance against all seven accused persons under the aforesaid sections.

5. It is submitted on behalf of the petitioner-husband that the aforesaid order taking cognizance was challenged before the Court of learned Sessions Judge, Saharsa in Cr. Rev. 47 of 2011 which came to be dismissed vide order dated 23.09.2011 and the order taking cognizance was affirmed. Thereafter the order of dismissal dated 23.09.2011 passed in Cr. Rev. 47 of 2011 was challenged before this Court in Cr. Misc. 44953 of 2011 which was allowed vide order dated 20.03.2015, after the aforesaid application was withdrawn *qua* the petitioner-husband and the application was allowed by this Court with regard to the other co-accused persons.

6. It is submitted on behalf of the petitioner that subsequently the petitioner-husband preferred a discharge application, which was dismissed vide order dated 01.09.2017



and the learned Court had ordered to proceed with framing of charge. Thereafter the petitioner-husband aggrieved from the aforesaid order of dismissal on his discharge petition, preferred a Cr. Rev. 97/2017 which also came to be dismissed vide impugned order dated 10.08.2021.

7. The learned Senior Counsel for the petitioner has submitted that during the course of investigation the Investigating Officer had found that the place of occurrence was the *nahihar* (the paternal home of the informant), i.e., village Parsarna in District Supaul whereas as per the statement made in the F.I.R the alleged occurrence took place at the matrimonial home of the informant at village Patori, district Saharsa. Further it has been submitted that there is no question of causing any bodily injury to the opposite party no. 2 or even attempt thereof. Furthermore, it has been submitted that there has been no direct evidence against the family members of the petitioner and considering this very fact, this Court had quashed the order taking cognizance with regard to the other co-accused persons. Therefore, it is argued on behalf of the petitioner that the present case has been instituted with oblique motive against the petitioner-husband.

8. The learned Senior Counsel has emphasized that



since the petitioner-husband had preferred a Matrimonial Case bearing no. 120 of 2008 on 15.10.2008 before Family Court, Saharsa against the opposite party no. 2 under section 13(1) of the Hindu Marriage Act, therefore in order to perfect her legal defence for the aforementioned matrimonial case the opposite party no.2 has preferred this instant criminal case. It has further been emphasized by the learned Senior Counsel that the very fact of pendency of the aforesaid matrimonial case before the Family Court, Saharsa would amply illustrate that the informant/opposite party no.2 was in fact not residing at her matrimonial house was actually at her paternal house (*naihar*). It is vehemently argued that the Courts below have failed to appreciate that there is an ongoing matrimonial dispute pending before the Family Court, Saharsa and also that the opposite party no.2 was not living with her husband at her matrimonial house during the date of alleged occurrence, further the informant has also failed to produce any injury report in support of her allegations. It has also been pointed to this Court that as per the allegations, kerosene oil was poured, however no kerosene oil poured clothes were produced before the investigating officer. It has been submitted by the learned Senior Counsel that putting the petitioner through the rigors of criminal



trial would amount to abuse of the process of law and that the present case is pending at the stage of framing of charge. It has lastly been submitted on behalf of the petitioner that no offence against the petitioner has been made out.

9. Heard the parties and perused material available on record including the case diary.

10. The present case is pending at the framing of charge stage. The Hon'ble Supreme Court in the case of ***State through Deputy Superintendent of Police vs. R. Soundirarasu etc.*** reported as **(2023) 6 SCC 768** has held as follows:

50. *The procedure for trial of warrant cases by Magistrate is provided for under Chapter XIX of the CrPC and Sections 239 and 240 respaly relate to discharge and framing of charge.*

51. *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 is not to be gone into.*

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53. *The aforestated Sections indicate that the CrPC contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it, cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. The three Sections contain somewhat different provisions in regard to discharge of the accused. As per Section 227, the trial judge is required to discharge the accused if “the Judge considers that there is not sufficient ground for proceeding against the accused”. The obligation to discharge the accused under Section 239 arises when “the Magistrate considers the charge against the accused to be*



groundless". The power to discharge under Section 245(1) is exercisable when "the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted would warrant his conviction". Sections 227 and 239 resply provide for discharge being made before the recording of evidence and the consideration as to whether the charge has to be framed or not is required to be made on the basis of the record of the case, including the documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the parties to be heard. On the other hand, the stage for discharge under Section 245 is reached only after the evidence referred to in Section 244 has been taken.

54. Despite the slight variation in the provisions with regard to discharge under the three pairs of Sections referred to above, the settled legal position is that the stage of framing of charge under either of these three situations, is a preliminary one and the test of "prima facie" case has to be applied — if the trial court is satisfied that a prima facie case is made out, charge has to be framed.

55. The nature of evaluation to be made by the court at the stage of framing of charge came up for consideration of this Court in *Onkar Nath Mishra and others v. State (NCT of Delhi)* and another, (2008) 2 SCC 561, and referring to its earlier decisions in the *State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659, and the *State of M.P. v. Mohanlal Soni*, (2000) 6 SCC 338, it was held that at that stage, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged and it is not expected to go deep into the probative value of the materials on record. The relevant observations made in the judgment are as follows:

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record



with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”

56. Then again in the case of *Som Nath Thapa* (supra), a three- Judge Bench of this Court, after noting the three pairs of Sections i.e. (i) Sections 227 and 228 resply in so far as the sessions trial is concerned; (ii) Sections 239 and 240 resply relatable to the trial of warrant cases; and (iii) Sections 245(1) and (2) qua the trial of summons cases, which dealt with the question of framing of charge or discharge, stated thus: (SCC p. 671, para 32).

"32...if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

57. In a later decision in *Mohanlal Soni* (supra),



this Court, referring to several of its previous decisions, held that: (SCC p. 342, para 7) "7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

58. Reiterating a similar view in Sheoraj Singh Ahlawat and others v. State of Uttar Pradesh and another, (2013) 11 SCC 476, it was observed by this Court that while framing charges the court is required to evaluate the materials and documents on record to decide whether the facts emerging therefrom taken at their face value would disclose existence of ingredients constituting the alleged offence. At this stage, the court is not required to go deep into the probative value of the materials on record. It needs to evaluate whether there is a ground for presuming that the accused had committed the offence and it is not required to evaluate sufficiency of evidence to convict the accused. It was held that the Court at this stage cannot speculate into the truthfulness or falsity of the allegations and contradictions & inconsistencies in the statement of witnesses cannot be looked into at the stage of discharge.

59. In the context of trial of a warrant case, instituted on a police report, the provisions for discharge are to be governed as per the terms of Section 239 which provide that a direction for discharge can be made only for reasons to be recorded by the court where it considers the charge against the accused to be groundless. It would, therefore, follow that as per the provisions under Section 239 what needs to be considered is whether there is a ground for presuming that the offence has been committed and not that a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offences alleged would justify the framing of charge against the accused



in respect of that offence, and it is only in a case where the Magistrate considers the charge to be groundless, he is to discharge the accused after recording his reasons for doing so.

60. Section 239 envisages a careful and objective consideration of the question whether the charge against the accused is groundless or whether there is ground for presuming that he has committed an offence. What Section 239 prescribes is not, therefore, an empty or routine formality. It is a valuable provision to the advantage of the accused, and its breach is not permissible under the law. But if the Judge, upon considering the record, including the examination, if any, and the hearing, is of the opinion that there is "ground for presuming" that the accused has committed the offence triable under the chapter, he is required by Section 240 to frame in writing a charge against the accused. The order for the framing of the charge is also not an empty or routine formality. It is of a far-reaching nature, and it amounts to a decision that the accused is not entitled to discharge under Section 239, that there is, on the other hand, ground for presuming that he has committed an offence triable under Chapter XIX and that he should be called upon to plead guilty to it and be convicted and sentenced on that plea, or face the trial. (See :V.C. Shukla v. State through CBI, AIR 1980 SC 962).

61. Section 239 of the CrPC lays down that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. The word 'groundless', in our opinion, means that there must be no ground for presuming that the accused has committed the offence. The word 'groundless' used in Section 239 of the CrPC means that the materials placed before the Court do not make out or are not sufficient to make out a prima facie case against the accused.

62. The learned author Shri Sarkar in his Criminal P.C., 5th Edition, on page 427, has opined as:-

"The provision is the same as in S. 227, the only difference being that the Magistrate may examine the accused, if necessary, of also S.



245. The Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and documents mentioned in S. 173; (ii) examining the accused, if necessary and (iii) hearing the arguments of both sides he thinks the charge against him to be groundless, i.e., either there is no legal evidence or that the facts do not make out any offence at all."

63. In short, it means that if no prima facie case regarding the commission of any offence is made out, it would amount to a charge being groundless.

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65. Thus the word 'groundless', as interpreted by this Court, means that there is no ground for presuming that the accused has committed an offence.

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69. The real test for determining whether the charge should be considered groundless under Section 239 of the CrPC is that whether the materials are such that even if unrebutted make out no case whatsoever, the accused should be discharged under Section 239 of the CrPC. The trial court will have to consider, whether the materials relied upon by the prosecution against the applicant herein for the purpose of framing of the charge, if unrebutted, make out any case at all.

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72. The ambit and scope of exercise of power under Sections 239 and 240 of the CrPC, are therefore fairly well settled. The obligation to discharge the accused under Section 239 arises when the Magistrate considers the charge against the accused to be "groundless". The Section mandates that the Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and the documents sent with it under Section 173, (ii) examining the accused, if necessary, and (iii) giving the prosecution and the accused an opportunity of being



heard, he considers the charge against the accused to be groundless, i.e., either there is no legal evidence or that the facts are such that no offence is made out at all. No detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken at this stage - the only consideration at the stage of Section 239/240 is as to whether the allegation/charge is groundless.

73. This would not be the stage for weighing the pros and cons of all the implications of the materials, nor for sifting the materials placed by the prosecution- the exercise at this stage is to be confined to considering the police report and the documents to decide whether the allegations against the accused can be said to be “groundless” (emphasis applied).

11. From the perusal of the records of the case and more particularly from the statement of the victim (opposite party no.2) in my opinion there are *prima facie* sufficient material for framing of charges.

12. I have also perused the case diary of the investigation and from paragraph No. 2 and 3 of the case diary which contains the restatement of the complainant together with the statements of the mother of the complainant (paragraph No. 11), the uncle of the complainant (paragraph No. 12) and the *Mukhiya* (paragraph No. 13) have all supported the allegations levelled in the complaint petition. The Court could not conduct a mini-trial to discern the veracity of the incriminating materials or the defence of the accused at this stage. Since there are triable



issues involved the charges levelled against the accused cannot be termed as groundless so as to warrant interference by this Court. The Court could not thread bare evaluate the varacity *sams* proper trial.

13. The Revisional Court was therefore correct in not interferring with the order dated 01.09.2017 passed by the S.D.J.M., Supaul dismissing the application under Section 239 of the Cr. P.C. preferred by the petitioner.

14. I find no illegality or error in the impugned order, therefore, in the facts and circumstances of the present case and for the foregoing discussions, this application is dismissed.

15. The S.D.J.M, Supaul is hereby directed to proceed with the trial and conclude the same at the earliest possible time. The S.D.J.M, Supaul is further directed to submit a report after six months with regard to the stage of the trial.

16. Needless to state that the petitioner will cooperate in the trial wherein the petitioner would be at liberty to raise all grounds in his defence.

(Sandeep Kumar, J)

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