

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53594 of 2022

Arising Out of PS. Case No.-527 Year-2020 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

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Md Iqbal Son Of Shakil Ahmad Resident Of Village - New Azimabad Colony,
Sector -D, Street No. 10, House No.661, P.S.- Bahadurpur, Distt.- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sana Jubair D/o Zuberul Hasan , W/o Md. Iqbal Resident of Village - Milki Chak, P.s.- Bahadurpur, Distt.- Darbhanga.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anisur Rahman, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 14-07-2025 Heard the learned counsel for the petitioner and the learned counsel for the State. None appears for the O.P. No. 2 despite valid service of notice.

2. This application has been filed for quashing order of cognizance dated 2.8.2022 passed by the learned A.C.J.M. 1st, Darbhanga in C.R. No. 527/2020 by which cognizance has been taken under Section 4 of The Muslim Women (Protection of Rights on Marriage) Act, 2019 and under Sections 504 and 506 of I.P.C.

3. The Prosecution case as per the complaint petition is that the marriage of the complainant was solemnized with the petitioner as per Muslim rites and customs on 03.01.2020. At



the time of marriage, the father of the complainant gave jewellery worth Rs. 9,00,000/- cloth, other articles and cash but the accused and his relative began to demand 20 Lakh and on non fulfillment of the demand, the complainant was assaulted and tortured and effort was made to kill her. Thereafter, on 21.7.2020, the accused and his relatives ousted her from her matrimonial house. Thereafter, the complainant got an FIR lodged in Bahadurpur Police Station *vide* Bahadurpur P.S. Case No. 105/2020. It is alleged that on 29.07.2020 when the complainant was at New Azimabad Colony, the accused along with others came and pronounced Talaq three times. It is further alleged that the husband of the complainant had threatened her that he would kill her and her entire family, if she filed a case.

4. The learned counsel for the petitioner has submitted that from perusal of the complaint petition it is evident that the occurrence took place in Patna at New Azimabad Colony whereas the present complaint was filed at Darbhanga. So the Court at Darbhanga has no jurisdiction to take cognizance of the offence that took place in Patna at New Azimabad. He further submits that the allegation against the petitioner as mentioned in the complaint petition is false and concocted and no offence u/s 4 of Muslim Woman (Protection of right of marriage) Act 2019



and u/s 504 and 506 of I.P.C. is made out against the petitioner in view of fact that the petitioner was not present in India on the date and time when the alleged occurrence took place which is manifest from the tickets from Patna to New Delhi dated 27.7.2020, from Delhi to Amsterdam dated 28.7.2020, Boarding pass dated 28.7.2020. From the passport immigration stamp dated 28.7.2020 it is also evident that the petitioner was out of India on the date on which the offence took place. He further submits that it is relevant to mention here that the complainant has filed the present complaint petition suppressing the fact that she has already been divorced by the petitioner. The complainant mentally tortured the petitioner in various ways and then lastly he decided to give divorce to the complainant as per Islamic tradition. The petitioner has pronounced first Talaq (Divorce) on 27.5.2020 in presence of his parents and the complainant at his house at Patna, during the period of Tuhar (Purity), the petitioner pronounced Second Talaq on 27.6.2020 at Hotel Raina Residency, Ayachi Nagar, Darbhanga during the period of Tuhar of complainant in presence of her and her father and parents of petitioner. The petitioner pronounced third Talaq on 27.7.2020 by mail in writing and also paid the amount of maintenance for *Iddat* Period and *Den Mehar*, amounting to Rs.



1,25,000/- on 29.7.2020 to the account of the complainant. Therefore, it is submitted that as such the divorce given by the petitioner to the complainant does not come within the meaning of section 5 of The Muslim Women (Protection of Rights on Marriage) Act, 2019.

5. The learned counsel for the petitioner has brought on record the photocopy of money transfer confirmation. He further submits that the petitioner had filed a petition on 10.2.2021 before the learned ACJM 1st, Darbhanga in complaint case bearing C.R. No. 527 of 2020 stating therein that the petitioner was out of India on the date and time (29.7.2020 at 5:30) when the alleged offence took place. In support of his averments, the petitioner had enclosed the relevant documents which is also brought on record. It was further stated in the said petition that in exceptional cases court can look into those documents which are unimpeachable and can be translated into relevant evidence.

6. In support of his submission, learned counsel for the petitioner has relied upon a judgment of this Court in the case of Md. Shamim & Ors vs State of Bihar & Ors reported as (2002) 4 PLJR 829/ 2002 SCC OnLine Pat 570.

7. Paragraph No. 4 of the judgment of this Court in



the case of ***Md. Shamim (Supra)*** reads as follows:

4. The materials on record which have not been controverted by any of the parties support the contention that a Police Case is pending regarding the same allegation which are subject matter of the present complaint case. In such circumstances, learned Magistrate was required to follow the procedure laid down under Section 210 of the Code of Criminal Procedure and accordingly, stay the proceedings of enquiry or trial in the complaint case and should have proceeded further only after calling for a report on the matter from the police officer conducting the investigation. Obviously, such a course as required by law has not been adopted by the Magistrate because the complainant concealed the relevant facts in the complaint petition. In such circumstances, if the contention of the petitioners is correct that they wanted to bring the relevant facts to the notice of the learned Magistrate then the learned Magistrate should have taken note of such limited submission in the interest of justice because such a submission of relevant facts related to an important matter relating to manner of exercise of jurisdiction by the Magistrate. Otherwise also where certain relevant facts are brought to the notice of a court which can cure the ill effects of suppression of vital facts by one of the parties then the court concerned will always have jurisdiction to examine such facts and prevent play of any kind of fraud upon the court.



8. Learned counsel for the complainant has opposed the prayer of the petitioner and has submitted that the Court below has rightly taken the cognizance against the petitioner as the offences under Section 4 of The Muslim Women (Protection of Rights on Marriage) Act, 2019 and the offence under Sections 504 and 506 of the IPC are made out against the petitioner.

9. The learned counsel for the State has supported the submission of the learned counsel for the complainant.

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

11. From the materials available on record it appears that on the alleged date of occurrence, the petitioner was not present in the country, therefore when the petitioner was outside the country on the date of occurrence, his prosecution is found to be *mala-fide* and the cognizance order 02.08.2022 passed by the learned A.C.J.M-1st, Darbhanga in C.R. No. 527 of 2020 is not sustainable and the same is hereby quashed.

12. Accordingly, the application stands allowed.

(Sandeep Kumar, J)

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