

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61176 of 2024

Arising Out of PS. Case No.-298 Year-2021 Thana- SIRDALA District- Nawada

Rahul Kumar @ Rahul Singh S/O Madan Mohan Singh R/O Village- Sonpur
Khaira, P.S- Sirdala, Distt.- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kajal Kumari W/O Rahul Singh R/O Village- Khaira, P.S- sirdala, Distt.-
Nawada.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Vardaan Mangalam, Advocate Mr.Dinu Kumar, Advocate Mrs.Ritika Rani, Advocate
For the Opposite Party/s :		Mr.Ajit Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 02-12-2025

Heard Mr. Vardaan Mangalam along with Mr. Dinu Kumar and Mrs. Ritika Rani, learned counsels appearing on behalf of the petitioner and Mr. Ajit Kumar, learned APP for the State.

2. The present application has been preferred under Section 482 of Cr.P.C. for quashing of order dated 05.04.2022 passed by the learned CJM Ist, Nawada in Sirdala P.S.Case No.298 of 2021, CIS No.2314 of 2021, in which cognizance has been taken under Sections 341, 323, 504, 506, 498(A), 341 of IPC and Sections $\frac{3}{4}$ of Dowry Prohibition Act.

3. As per the allegation made in the FIR, the marriage



of informant was solemnized with the petitioner in the year, 2017 and on that occasion, her father gave cash and other articles to her in-laws. After the marriage, she gave birth to a male child. She alleged that just after one year of her marriage, the petitioner including other co-accused persons started demanding Rs.5 lac and due to non-fulfilment of their demand, they started torturing and assaulted her.

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner got married with the informant in the year, 2017 and they were blessed with a male child on 02.12.2018. The informant just after the marriage went to her parental home and she remained with her parents for longer period. The petitioner asked her to stay with his parents but she refused, which led to quarrel between them. It is alleged that the informant was in relationship with another man before her marriage and her conduct after the marriage was not so sound. The petitioner filed Matrimonial Case No.24 of 2020 for divorce but the said case got dismissed for non-prosecution. After dismissal of the above case, the petitioner filed Matrimonial Case No.159 of 2022 before the learned Principal Judge, Family Court, Jehanabad. Learned counsel further submitted that the allegation as alleged against the petitioner



under Sections 341, 323, 504, 506, 498(A), 341 IPC is ornamental in nature just to pressurize the petitioner so that he can live separately with her without any interference of his parent.

5. Learned counsel submitted that O.P. No.2 is not ready to live with the petitioner and in absence of any ingredients of Sections 3/4 of Dowry Prohibition Act, no case is made out against the petitioner under Section 498 of IPC. In such circumstances, the petitioner is facing criminal prosecution based on the false accusation leading to malicious case pending against him.

6. Learned APP submitted that due to strained matrimonial relationship between the husband and wife, false accusation cases are being lodged against the husband. In the present case, the petitioner has already filed Matrimonial Case No.159 of 2022 for dissolution of the marriage before the learned Principal Judge, Family Court, Jehanabad, in such circumstances, keeping the present quashing application pending before this Court would not serve the purpose.

7. Heard the parties.

8. Having considered the rival submissions made on behalf of the parties, it appears that the parties don't want to



reconcile at all and it has become very difficult for them to live with each other. In such, circumstances, I find that the amicable settlement is the best recourse. In case, the parties desire to separate, they can file a joint petition for separation with each other on such terms and conditions as the learned Family Court finds it proper and otherwise also they have time to reconcile and live a happy married life and take care of only child by not playing with his future by endangering his growth due to acrimonious relationship between husband and wife.

9. In the facts of the present case, it is apt to take into consideration the observations made by the Apex Court in paragraph nos. 12 and 13 in the case of **B.S. Joshi v. State of Haryana**, reported in, **(2003) 4 SCC 675**, which is reproduced hereinafter:

“ 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.

10. In peculiar facts of the case and the background circumstances that the parties have only one male child, his welfare is required to be taken for proper growth. The Apex Court dealing with such situation on the touchstone of principle of *parens patriae* in the case of **Howarth v. Northcott, 152 Conn 460** has observed that the welfare of the child is of paramount consideration. I find it apt to reproduce the observations made by the Apex Court in the aforesaid case, which is as under:

"In habeas corpus proceedings to determine child custody, the jurisdiction exercise by the Court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patrie, for the protection of its infant ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity." (emphasis supplied)

It was further observed;

"The employment of the forms of habeas corpus in a child custody case is not for the purpose of testing the legality of a confinement or restraint as contemplated by the ancient common law writ, or by statute, but the primary purpose is to furnish a means by which the court, in the



exercise of its judicial discretion, may determine what is best for the welfare of the child, and the decision is reached by a consideration of the equities involved in the welfare of the child, against which the legal rights of no one, including the parents, are allowed to militate. It was also indicated that ordinarily, the basis for issuance of a writ of habeas corpus is an illegal detention; but in the case of such a writ sued out for the detention of a child, the law is concerned not so much with the illegality of the detention as with the welfare of the child.”

11. 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."

12. 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."

13. From perusal of the record, it appears that the petitioner is blessed with a male child, who is aged about seven years and about his welfare, no statement has been made on behalf of the petitioner in the present application, I find that the petitioner in such circumstances being father of the child is required to take care of his child and to make payment of **Rs.10,000/- (Ten Thousand) per month** so that the child is not deprived of the proper nutrition and education.

14. Having regard to the above facts and considering that the petitioner has filed Matrimonial Case No.159 of 2022, which is pending before the learned Principal Judge, Family Court, Jehanabad and the record reveals that the notices have



been issued to O.P. No.2, I find it proper that the petitioner, who is ready to separate from O.P. No.2 must appear before the learned district court on **09.12.2025 at 10.30 A.M.** The learned District Court is directed to take necessary steps to refer the matter before the learned Mediator of the District Mediation Center, by fixing a date, if circumstances, so requires.

15. In that case, the 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 before the learned District Court on the date fixed 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. Accordingly, the present quashing application stands disposed of.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.12.2025
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