

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61733 of 2024

Arising Out of PS. Case No.-40 Year-2023 Thana- MAHILA P.S. District- Lakhisarai

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Sujeet Kumar @ Sujit Kumar S/o Krishna Mohan Prasad Singh @ Krishna Mohan Prasad R/o Village- Gaurah Garh, PS- Bihar Sharif, District- Nalanda Bihar

... .. Petitioner/s

Versus

1. The State of Bihar
2. Soni Kumari D/o Shri Rajaram Singh R/o Vill - Jwas, Post - Dhiradar, P.S. - Badahiya, Distt. - Lakhisarai

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Ms.Richa, Advocate.
For the State	:	Mr.Manoj Kumar, APP.
For O.P. No.2	:	Mr. Sunil Kumar, Advocate.
		Mr. Pankaj Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 18-11-2025

Heard Ms. Richa, learned counsel appearing on behalf of the petitioner; Mr. Manoj Kumar, learned APP for the State and Mr. Sunil Kumar, learned counsel along with Mr. Pankaj Kumar, learned counsel appearing on behalf of the opposite party no.2.

2. The petitioner has preferred the application under Section 482 of the Cr.P.C. for quashing the F.I.R. registered as Lakhisarai Mahila P.S. Case No. 40 of 2023 under Sections 341, 323, 498A, 494 and 506/34 of the Indian Penal Code.

3. The prosecution story, in brief, is that the informant Soni Kumari @ Shruti Kumari, was married to Sujit Kumar on



20.02.2006 with the consent of both families as per Hindu marriage rituals, and for about 5–6 years everything remained peaceful. The couple was blessed with a son, Yash Kumar, and at that time her husband was pursuing a BCA course. It is alleged that after 5–6 years of marriage, all the members of her matrimonial family—namely (1) Sujit Kumar (husband), (2) Mena Singh (mother-in-law), (3) Krishna Mohan Prasad Singh (father-in-law), (4) Ranjeet Singh (elder brother-in-law), (5) Bablu (younger brother-in-law), (6) Ranjita Singh (sister-in-law), and (7) Pankaj Singh (husband of Ranjita Singh) started misbehaving with her, assaulting her, and harassing her for money in various ways. It is further alleged that the matrimonial family members even attempted to press her throat, following which she informed her father, who then took her to her parental home where she began residing. She further alleged that her husband subsequently started working in Delhi and solemnized a second marriage with one Sabya Kumari with the support of his parents and other family members, which was known to the entire matrimonial family. It is also alleged that after marriage with other lady, her husband stopped providing any financial support and repeatedly pressurized her for divorce. However, allegedly option was given to live with her in-laws as an attendant at Biharsharif, failing which threats were made that



she, along with her son, father, and brother, would be killed as the accused had sufficient influence and resources. It is also alleged that her husband and his second wife frequently visited Kolkata at her sister-in-law's residence. On the basis of the aforesaid written report, Lakhisarai Mahila P.S. Case No. 40/2023 dated 08.05.2023 was registered for offences under Sections 341, 323, 498-A, 494, 506, and 34 of the Indian Penal Code, and the case is pending before the court of the Sub-Divisional Judicial Magistrate, Lakhisarai.

4. Learned counsel appearing on behalf of the petitioner submitted that the parties are not at all willing to compromise and settle their dispute amicably. The petitioner persuaded his wife to live with him, but she refused repeatedly forcing the petitioner to file Matrimonial Case No. 763/2023 in the Family Court, Biharsharif, in which also O.P. No.2 is not appearing intentionally nor she wants to live with the petitioner. Learned counsel has placed reliance on the observation made by the Apex Court in Paragraph No. 26(xiv) in the case of **Rakesh Raman Vs. Kavita**, reported in **(2023) 17 SCC 433**, which is reproduced hereinafter:

“Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage;



on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

5. Learned counsel has further placed reliance on the judgment rendered by the Apex Court in the case of ***Shobhit Kumar Mittal Vs. State of Uttar Pradesh & Anr., reported in 2025 INSC 1152*** and ***Dara Lakshmi Narayana Vs. State of Telangana, reported in (2025) 3 SCC 735***.

6. *Per contra*, learned counsel appearing on behalf of the opposite party no.2 submitted that it has become difficult for the opposite party no.2 to live with the petitioner because the petitioner has not only intentionally subjected her to cruelty, but at the same time, he is not taking proper care of his only child who is aged about 17 years and is going to emerge as an adult. Learned counsel is also of the view that amicable settlement is the best recourse and for that opportunity may be given to the parties, as the offence is not against the society and the court need not encourage such dispute.

7. Learned APP for the State submitted that opportunity may be given to the parties to reconcile their dispute amicably, so that peace can be brought in the family.

8. Heard the parties.

9. Having considered the rival submissions made on behalf of the parties, It has been informed 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.

10. 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.

11. In peculiar facts of the case and the background circumstances that the parties have only one child who is 17 years old, 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.”

12. 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.”



13. 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."

14. Based on the above principle of law, for the welfare of the child, I direct the petitioner to make payment of Rs.5000/- per month for his care and nutrition. At the same time, he must ensure regular payment of tuition fee and his other educational expenses.

15. Considering some hope of negotiation, I direct both the parties to appear before the learned District Court to settle their dispute outside the Court instead of fighting it out.

16. Learned District Court is directed to take necessary steps to refer the matter before the learned Mediator of the District Mediation Center, if circumstances, so requires.

17. 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 six months, till then, no coercive



action shall be taken against the petitioner in connection with the aforesaid case.

18. 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.

19. 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.

20. 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.

21. Accordingly, the present quashing application stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	NAFR
CAV DATE	NA
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