

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2442 of 2024

Arising Out of PS. Case No.-233 Year-2017 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Khushnuma Parveen @ Tarana D/O Rahmat Ali R/O Village- Jafra Bazar, Ibrahim Colony, P.S- Tiwaripur, Distt.- Gorakhpur (Uttar Pradesh).
 2. Nooruddin Ali @ Nuruddin S/O Rahmat Ali R/O Village- Jafra Bazar, Ibrahim Colony, P.S- Tiwaripur, Distt.- Gorakhpur (Uttar Pradesh).
 3. Nasiruddin @ Md. Nasiruddin S/O Rahmat Ali R/O Village- Jafra Bazar, Ibrahim Colony, P.S- Tiwaripur, Distt.- Gorakhpur (Uttar Pradesh).
 4. Badruddin S/O Rahmat Ali R/O Village- Jafra Bazar, Ibrahim Colony, P.S- Tiwaripur, Distt.- Gorakhpur (Uttar Pradesh).

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Jahid Warsi S/O Shakil Warsi, R/O Mohalla- Mahandru, P.S- Sultanganj, Distt.- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sarvesh Kashyap, Advocate
For the Opposite Party/s : Mr.Arun Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 28-04-2025

Heard learned counsel appearing on behalf of the parties.

2. The present application has been filed for quashing the order dated 31.05.2017 passed by the learned Additional Chief Judicial Magistrate, Patna in connection with Complaint Case No. 233 of 2017 whereby and where under the learned Additional Chief Judicial Magistrate, Patna took cognizance against the petitioners for the offence under Sections 341, 379, 387, 323,



504, 34 of the Indian Penal Code.

3. Prosecution case in brief is that the complainant had married to petitioner No. 1 on 12.02.2014 in Gorakhpur. In the marriage no gift was given or taken by either side. After marriage petitioner No. 1 joined her matrimonial home in Patna and started pressurizing complainant/opposite party no. 2/husband to move Gorakhpur to set up his business. Thereafter, petitioner No.1 became pregnant and she went to her parental home, where she gave birth to a son. When complainant got knowledge about it, he went to Gorakhpur to see his son, where his in-laws and other family members threatened him to move to Gorakhpur by selling everything in Patna and to start business in Gorakhpur. Complainant tried to bring his wife and son to Patna but they did not let him to do so. They also abused complainant and his parents. Thereafter complainant filed a suit for restitution of conjugal right in Patna on 28.01.2017, whereafter petitioner no.1 called the complainant and told him that they want to settle the dispute and wanted to meet complainant. Whereafter, petitioner no. 1 she along with other accused petitioners and two unknown persons reached Patna and called the complainant and told him to come to Mahendru, when complainant reached there, all persons told him to come to Gorakhpur again when he refused they showed



him pistol and made him to sit in a Bolero. They also took his signature on blank papers and asked for “triple talak” to petitioner no. 1, when he refused to do so, they took his ring and money bag and also slapped him and dropped him roadside near Pahari, Bypass.

4. It is submitted by learned counsel appearing for petitioners that the petitioner no. 1 being wife lodged a complaint case against the complainant husband/opposite party no. 2 bearing Complaint Case No. 2329 of 2015 arising out of matrimonial discord, where the cognizance was taken for offences punishable under Sections 498A, 323, 504, 506 of Indian Penal Code and also $\frac{3}{4}$ of Dowry Prohibition Act. It is also pointed out that petitioner no. 1 being wife lodged a case under domestic violence act under Section 12 for different kinds of protection, which is pending as Original Case No. 2342 of 2015. It is further pointed out that in aforesaid case, the court of Judicial Magistrate 1st Class, Gorakhpur, Uttar Pradesh passed an order of monetary protection for Rs. 2000/- in favour of petitioner no. 1 and her minor son. It is pointed out that matter settled thereafter under compromise and both parties started to reside together but the opposite party no. 2 and his family members again started to torture petitioner no. 1. Consequent upon, she narrated her story



to her family members, whereafter FIR for offences under Sections 498A, 323, 504, 506 and 313 of the Indian Penal Code and 3/4 of Dowry Prohibition Act was registered with Tiwaripur Police Station in Gorakhpur through FIR No. 0227 of 2022 on 22.11.2022. It is pointed out that in retaliation of aforesaid case, the present criminal complaint was lodged by opposite party no. 2/husband against petitioner no. 1 and her family members, purely on manipulated grounds out of ulterior and oblique motive as to harass the petitioner no. 1 and her family members/brothers. In this context, it is submitted that on the basis of allegation that brother of petitioner no. 1 taken out Rs. 6000/- from the pocket of opposite party no. 2, only with harassing approach that as opposite party no. 2 has to attend the proceedings at Gorakhpur in Uttar Pradesh.

5. Both parties are appeared in person.

6. Learned counsel appearing for the opposite party no. 2/husband, while arguing the matter submitted that the petitioners lodged a case for restitution of conjugal right, though he admitted that parties are governed by Muslim law. It is submitted that petitioner no. 1, her brother and family members behaved very rudely with opposite party no. 2. It is submitted that opposite party no. 2 taken out cash of Rs. 6000/- alongwith ring. However,



he could not disputed submission as advanced by learned counsel appearing for petitioners.

7. It would be apposite to reproduce para -102 of the ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.***, reported in ***1992 Supp (1) Supreme Court Cases 335***, which reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.



(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8. It would be apposite to reproduce para-13, 14, 15, 16 & 17 of the legal report of Hon'ble Supreme Court passed in the case of **Abhishek vs. State of Madhya Pradesh** reported in **2023 SCC Online SC 1083**, which are as under:-

"13. *Instances of a husband's family members filing a petition to quash criminal*



*proceedings launched against them by his wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty abound on this score. We may now take note of some decisions of particular relevance. Recently, in **Kahkashan Kausar alias Sonam v. State of Bihar [(2022) 6 SCC 599]**, this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC. Noting that the foremost issue that required determination was whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial disputes. This Court observed that false implications by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked, would result in misuse of the process of law. On the facts of that case, it was found that no specific allegations were made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict severe scars upon the accused and such an exercise ought to be discouraged.*

14. In *Preeti Gupta v. State of Jharkhand [(2010) 7 SCC 667]*, this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed that 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, as allegations of harassment by husband's close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have



to be scrutinised with great care and circumspection.

15. Earlier, in **Neelu Chopra v. Bharti [(2009) 10 SCC 184]**, this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the 'be all and end all' of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that offence. These observations were made in the context of a matrimonial dispute involving Section 498A IPC.

16. Of more recent origin is the decision of this Court in **Mahmood Ali v. State of U.P. (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023)** on the legal principles applicable apropos Section 482 Cr. P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr. P.C. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

17. In **State of Haryana and Ors. Vs. Bhajan Lal and Ors [(1992) Supp (1) SCC 335]**, this Court had set out, by way of illustration, the broad categories of cases in which the inherent power under Section 482 Cr. P.C. could be exercised. Para 102 of the decision reads as follows:



'102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

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(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9. Considering the arguments as canvassed by learned counsel appearing for the parties, upon perusal of record and legal position as discussed above, it transpires that the allegation against petitioner no. 1 and her family members including brothers appears very much general and omnibus appears raised out of ulterior and oblique motive in the background of matrimonial discord, for which the case is pending between opposite party no. 2 and petitioner no. 1 at Gorakhpur in Uttar Pradesh. It also transpires that the nature of allegation raised out of malicious approach for harassing petitioners to face criminal proceedings at Patna, Presence of petitioners at Patna on date and time of occurrence also appears disputed.

9. Considering the aforesaid, this Court finds that the case of petitioners covered under guideline nos. 1 and 7 of ***Bhajan Lal's Case (supra)***, accordingly, impugned order of cognizance dated 31.05.2017 as passed by learned Additional



Chief Judicial Magistrate, Patna in connection with Complaint Case
No. 233 of 2017 is hereby set aside and quashed *qua* above
named petitioners with all its consequential proceedings.

10. Let copy of this order be sent to the trial court,
without delay.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.05.2025
Transmission Date	02.05.2025

