

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1910 of 2025

Arising Out of PS. Case No.-47 Year-2023 Thana- MAHILA P.S. District- Rohtas

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1. Husainyana Khatoon @ Husain Ara Khatoon, Female, aged about 69 years, wife of Late Md. Khalil Khan @ Late Khalil Khan, Resident of Mohalla-Karan Sarai, P.S.-Sasaram Nagar, District-Rohtas.
 2. Md. Aslam Khan @ Md. Aslam Sahid Khan, Male, aged about 38 years, Son of Late Md. Khalil Khan @ Late Khalil Khan, Resident of Mohalla-Karan Sarai, P.S.-Sasaram Nagar, District-Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Raunque Parween D/o Habibullah Khan, Wife of Rashid Zafar @ Md. Rashid Zafar Resident of mohalla-Jakki Sahid, P.O.-Sasaram, P.S.-Sasaram Nagar, District-Rohtas.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the Opposite Party/s : Mr. Yogendra Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 12-12-2025

Heard learned counsel appearing on behalf of the
petitioners and learned APP for the State.

2. The petitioners have preferred application under Section 482 of Cr.P.C. for quashing of the order taking cognizance dated 18.06.2024 passed by learned A.C.J.M.-cum-Sub Judge-VIII, Rohtas at Sasaram in Mahila P.S. Case No. 47 of 2023, by which learned A.C.J.M.-cum-Sub Judge-VIII, Rohtas at Sasaram, has taken cognizance of offence under Sections 323, 498 A/34 of the Indian Penal Code and Section 3/4 of the D.P. Act.

3. The prosecution story in brief is that the informant was married to one Rashid Zafar on 23.10.2021 and out of the



wedlock, the informant and her husband have been blessed with a girl child, who is aged about 6 months. After few years of marriage, the husband of the informant along with his family members, had started torturing her mentally and physically for demand of four wheeler as dowry and due to non-fulfillment of the same, they had ousted her from her matrimonial house along with her child.

4. Learned counsel appearing on behalf of the petitioners submitted that the allegation primarily arises out of dispute between husband and wife and is not against the society. Petitioner no. 1 is mother-in-law of Opposite party no.2 and petitioner no. 2 is brother-in-law (*Bhaisur*) of the opposite party no. 2, who are married and reside at different village. Learned counsel further submitted that marriage is a sacred ceremony but little matrimonial skirmish suddenly erupts into hatred and the parties ponder to reconcile their dispute outside the court.

5. *Per contra*, learned counsel for the State submitted that the opposite party no.2 is being harassed by the petitioners and, as such, the present quashing application is fit to be dismissed. He, however, submitted that a chance be given to the parties to settle their dispute amicably.

6. Heard the parties.



7. The law in respect of matrimonial dispute between husband and wife is well settled at the same time, the Apex Court has held that the family members of husband should not be roped unnecessarily and face vexatious criminal trial.

8. It is commonly seen in the society that the entire family members, as well as, relatives are made accused along with the husband to face criminal prosecution. The Apex Court has demarcated the manner in which the complaints are entertained by the learned District Court.

9. From perusal of the FIR, it is evident that there is no specific allegation against the petitioner no. 2, who is brother-in-law and allegation against him is general and omnibus.

10. It has been held by the Apex Court that the matrimonial dispute is not an offense against the society rather a matrimonial dispute is a private conflict between spouses and does not inherently constitute an offence against society. The Apex Court in the case of **B.S. Joshi v. State of Haryana**, reported in, **(2003) 4 SCC 675**, in paragraph nos. 12 and 13 by the Hon'ble Supreme Court, which is as under:-

“ 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. Recently also the Apex Court in the case of ***Navneesh Aggarwal & Ors. v. State of Haryana & Anr.*** reported in ***2025 INSC 963***, has held that the family members of husband should not be roped unnecessarily and face vexatious criminal trial.

12. I find that no case under Section 498A and other allied sections of IPC is made out against petitioner no. 2. Accordingly, the order taking cognizance dated 18.06.2024 are hereby **quashed and set aside to the extent it relates to petitioner no. 2.**

13. Recently, the Apex Court in the case of ***Mange Ram Vs. State of Madhya Pradesh & Another (Special Leave***



Petition (Criminal) No.10817 of 2024), in paragraph nos. 25 and 31 dealing with the cases related to dowry has held that opportunity be given to the parties first to reconcile. Paragraphs no. 23 and 31 are *inter alia* reproduced hereinafter:-

“25. This Court, in Dara Lakshmi Narayana vs. State of Telangana, (2025) 3 SCC 735, has made it clear that family members of the husband ought not to be unnecessarily roped into criminal proceedings arising out of matrimonial discord. The Court observed that it has become a recurring tendency to implicate every member of the husband’s family, irrespective of their role or actual involvement, merely because a dispute has arisen between the spouses. It was further held that where the allegations are bereft of specific particulars, and particularly where the relatives sought to be prosecuted are residing separately or have had no connection with the matrimonial home, allowing the prosecution to proceed would amount to an abuse of the process of law. The Court noted that criminal law is not to be deployed as an instrument of harassment, and that judicial scrutiny must be exercised to guard against such misuse.

31. We also refer to Gian Singh vs. State of Punjab, (2012) 10 SCC 303 wherein this Court observed that where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled, although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored, securing the ends of justice being the ultimate guiding factor. In this regard, a specific reference was made to offences arising out of matrimony, particularly relating to dowry, etc. or a family dispute, where the wrong is basically to the victim but the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable. The High Court may, within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is



hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.”

14. A reference can be taken to law laid down by the Apex Court in case of ***Naushey Ali & Ors. Vs. State of Uttar Pradesh & Anr.*** reported in ***(2025) 4 SCC 78***, considering the entirety of matters, particularly dealing with the misuse of Section 498(A) of IPC, referring to its earlier judgment, finally concluded that offences arising out of matrimonial dispute particularly relating to dowry etc. or a family dispute where wrong is committed to the victim by the offenders and his family, can be settled amicably.

15. In the present case, the petitioner no. 1, who is mother-in-law of the O.P. No. 2 along with her son (husband of the O.P. No.2), has agreed to settle the dispute outside the Court and she has willingly desired to appear before the learned District Court on 24.12.2025 at 10:30 AM.

16. Learned District Court is directed to take necessary steps to issue notices to the respective parties and upon their appearance, refer the matter before the learned Mediator of the District Mediation Center by fixing a date for appearance of the parties.

17. 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 no. 1 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 no. 1 to appear on 24.12.2025 before the learned District Court or any date fixed by the learned Mediator, without any reason, the interim protection granted to the petitioner no. 1 shall automatically lose its force.

20. In case, it is deliberate on the part of the petitioner no. 1 and she 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 no. 1 shall continue and the trial shall proceed in accordance with law.

21. Before parting with the order, I find it proper to



direct the learned District Court to get informed that he has to play the role of *parens patriae* considering the fact that the husband of opposite party no.2 is not taking care of the six months old girl child born out of the wedlock, nor he is supporting financially or showing his love and affection. He must exercise his jurisdiction to consider for the welfare of the child which is paramount till the parties resolve their dispute in accordance with the law.

22. 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."

23. 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."

24. It is observed that the police, at the stage of filing of chargesheet, and the criminal court, at the stage of framing of charges, must act as initial filters ensuring that only cases with a strong suspicion should proceed to the formal trial stage to maintain the efficiency and integrity of the judicial system.

25. Accordingly, the order taking cognizance is modified to the above extent.



26. The application stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	19.12.2025
Transmission Date	19.12.2025

