

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5171 of 2019

Arising Out of PS. Case No.-32 Year-2017 Thana- MAHILA P.S. District- Sheikhpura

Md. Shamsheer @ Shamsheer Alam Late Habibullah Resident of Village-
Asthana, P.S.- Sheikhpura, District - Sheikhpura

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Kahkashah Parveen Md. Sadab R/O-Tarchha Pahartalli P.O.P.S-Sheikhpura
Dist-Sheikhpura

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Najmul Hodda, Advocate

Mr. Binay Kumar, Advocate

For the Opposite Party/s : Mr. Shyam Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

5 20-01-2026 Heard the learned counsel for the petitioner and the

learned counsel for the State. None had appeared on behalf of

the O.P. No. 2 despite valid service of notice.

2. This application has been filed for quashing the
order dated 03.11.2018 passed in G.R. NO. 1081/2017 arising
out of Sheikhpura Mahila P.S. Case No. 32 of 2017 passed by
the learned S.D.J.M., Sheikhpura rejecting the petition dated
09.08.2018 filed under Section 239 Cr.P.C.

3. The prosecution case, in brief, is that the informant,
Kahkasha Parveen, was married to the petitioner, Md.
Shamsheer Alam, in the year 2006 at village Asthana. After some
time, the petitioner began demanding dowry and started to



assault the informant. Subsequently, the petitioner left the informant two years ago and began living separately. The informant has one child from the marriage.

4. The learned counsel for the petitioner submits that the petitioner has been falsely implicated in this fabricated case due to the personal motives of the informant. He further submits that after investigation, the police submitted charge sheet under Sections 498A, 494, 506 of the Indian Penal Code (IPC) and Section 3/4 of the Dowry Prohibition Act and cognizance was taken by the learned Court under the same sections. He further submits that the petitioner has been falsely implicated in this case due to the ongoing civil and criminal disputes, particularly with one Md. Islam, the cousin brother of the informant, arising out of T.S. No. 26 of 2009, Case No. 153C of 2009, and Sheikhpura P.S. Case No. 01 of 2016.

5. The learned counsel for the petitioner has further submitted that the first marriage of the informant was solemnized with Jabir Hasan in the year 2000 in accordance with Muslim law and rites. From this marriage, the informant has two children. He further submits that it is alleged in the F.I.R. that the informant remarried the petitioner in 2006, concealing the fact of her first marriage. He further submits that



when the first husband, Jabir Hasan, came to know about the second marriage, he protested. Subsequently, within five days of the alleged second marriage, the informant resumed living with her first husband, Jabir Hasan. Thus, the second marriage was effectively ended in 2006. It is further submitted that after some years, the petitioner married one Seema Khatoon, a widow.

6. The learned counsel for the petitioner has further submitted that after twelve years, Md. Islam allegedly conspired and traveled to Patna to pressure Jabir Hasan (the first husband), urging him to file this false case. As a result, a fabricated and forged case was instituted against the petitioner. It is further submitted that on 09.08.2018, the petitioner filed a petition under Section 239 of the Cr.P.C. seeking his discharge from this case. However, the learned Court below, without considering the merits and available evidence, rejected the petition for discharge vide order dated 03.11.2018 in G.R. No. 1081/2017.

7. The learned counsel for the petitioner, in support of his submission, has relied upon a judgment of a Co-ordinate Bench of this Court passed in ***Cr. Revision No. 1506 of 2019 (Md. Shamser @ Md Shamsher Mansoori V/s The State of Bihar & Kahkasha Parveen Mansoori)***.

8. The learned APP for the State has opposed the



application of the petitioner.

9. I have heard and considered the submissions of the parties.

10. The relevant paragraphs of the aforesaid judgment are as follows:

6. *In paragraph 8 of her cross examination, opposite party No 2 categorically admitted the fact that she got married with one Jabir Hussain and out of their wedlock, two sons were also born and they are aged 17 and 15 years respectively. In paragraph 9 of the cross examination, she further deposed that her youngest daughter, i e, Al Shifa Daniya is aged about 13 years and according to opposite party No 2, she filed the maintenance case six months prior. In paragraph 10 of her cross examination, she further admitted that in the year 2006 when she got married with the petitioner herein, at that time, she was unaware of the whereabouts of her first husband Jabir Hussain. There is no evidence available on record which shows that opposite party No 2 took divorce from her first husband Jabir Hussain and after obtaining divorce from her first husband, she got married with the petitioner herein. Thus, it is clear that opposite party No 2 is the legally wedded wife of Jabir Hussain only and the marriage performed by her with the petitioner herein, if so, is an illegal marriage. Thus, on this ground alone, opposite party No 2 is not entitled*



to get any maintenance from the petitioner herein.

7. So far as the younger daughter of opposite party No 2 Al Shifa Daniya is concerned, perusal of the evidence further shows that there is no evidence available on record which establishes the fact that both petitioner and opposite party No 2 have resided jointly as husband and wife at any point of time. However, the learned Family Court, on the basis of the photostat copy of the passbook of Bihar Gramin Bank and photostat copy of ration card arrived on the conclusion that Al Shifa Daniya is the daughter of the petitioner herein as name of the petitioner is mentioned as the father of Al Shifa Daniya in the said documents. But the documents, relied upon by the learned Family Court, were not confronted with the petitioner herein during his examination or cross examination nor the said documents were exhibited by the concerned Family Court. Otherwise also, the said documents were only the photostat copies, therefore, were also not admissible in the evidence. Thus, finding of the learned Family Court that Al Shifa Daniya is the daughter of the petitioner is also perverse.

11. After considering the aforesaid judgment, it is clear that the O.P. No. 2 is the legally wedded wife of one Jabir Hussain only and the marriage performed by her with the petitioner herein is an illegal marriage.

12. In view of the aforesaid discussions, it appears



that the petitioner is being harassed by the O.P. No. 2 by filing a mala-fide prosecution to wreck vengeance.

13. Considering the facts and circumstances of the case, the application stands allowed. Accordingly, the order dated 03.11.2018 passed by the learned S.D.J.M., Sheikhpura, in G.R. No. 1081/2017 is hereby quashed. The petitioner is discharged from all the charges.

14. Pending application(s), if any, shall also stand disposed of.

(Sandeep Kumar, J)

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