IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20158 of 2018

CNR No. BRHC010338472018

Arising Out of PS. Case No.-181 Year-2017 Thana- GAYA COMPLAINT CASE District- Gaya

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PANKAJ KUMAR BHARTI @ PANKAJ BHARTI S/o Brijnath Prasad, R/o House No. 25, Adarsh Nagar, Near Thakur Prasad Community Hall, P.O.P.S.- Kidwaipuri, District- Patna.

... ... Petitioner/s

Versus

1. State Of Bihar and Anr
2. Nitu Kumari W/o Deepak Kumar Verma , R/o Village- Tika Bigha, P.S.- Bodhgaya, District- Gaya Currently R/o D/o Ram Nandan Prasad R/o Village- Punaan, P.S.- Wazirganj, District- Gaya.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Niraj Kumar, Advocate
Mr.Ashhar Mustafa, Advocate
Mr.Prashant Kumar, Advocate
For the State : Mr.J.N.Thakur, APP
For the O.P.No.2: Mr.Shailesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANSUL
ORAL JUDGMENT

Date : 27-10-2026

Heard Mr. Niraj Kumar, learned counsel for the petitioner, Dr. Mrityunjaya Kr. Gautam, learned APP for the State and Mr. Shailesh Kumar, learned counsel for the Opposite Party No. 2.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973. The petitioner seeks quashing of the order dated 03.01.2018 passed by the learned Sub Divisional Judicial Magistrate, Gaya in Complaint Case No. 181 of 2017. The complaint was filed for the offences under Sections 323, 379, 506

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and 498A read with Section 34 of the Indian Penal Code, 1860 and Sections 3 and 4 of the Dowry Prohibition Act, 1961. Cognizance has been taken only under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act against three of the five accused and they were summoned. The petitioner is one of the three.

3. The Opposite Party No. 2 is the complainant. She was married to Deepak Kumar Verma @ Santu in the year 2014. Her complaint, which bears the stamp of 09.02.2017, names five persons. Accused No. 1 is the husband. Accused No. 2 Baijnath Prasad @ Brijnath Prasad is the father-in-law and Accused No. 3 Sunaina Devi the mother-in-law. Accused No. 4 is the petitioner, the elder brother of the husband, that is, the *Bhaisur* of the complainant. Accused No. 5 Archana Vibhor is the wife of the petitioner.

4. According to the complaint her father gave five lakh rupees in cash, jewellery of about two lakh rupees and articles like sofa set, fridge and T.V. worth about one lakh fifty thousand rupees at the marriage. For two years the married life went on well and a son was born. Some time after the birth of the child all the accused started torturing her. One day all of them gathered in a room and called her and the petitioner told her that she had a son, that some

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side business had to be started for bringing him up properly and that for this she should get three lakh rupees and a motorcycle from her father. She answered that her father had already given all he could in the marriage and that they were being greedy. Accused No. 3 then said that she would not listen like this, that she talked too much, that she should be beaten and her food stopped. Accused No. 1 caught her hair, she fell down and all the accused beat her with fists and kicks. For about a month she was given food once a day. In March 2016 her parents and the witnesses came to village Tika Bigha but the accused stuck to the demand. Her father then gave fifty thousand rupees in the hand of the petitioner, asking them to keep his daughter well. All the accused gave the father six months to meet the demand, failing which they would leave her and get the husband married again. When the six months passed the torture started again and Accused No. 5 said that her father was a cheat, his time was over and he had not brought the money. Accused No. 1 said that she would not listen like this and all of them beat her and threw her on the ground. On 27.01.2017 all the accused beat her, took away her jewellery worth six lakh rupees and clothes worth twenty thousand rupees and drove her out with her son at about 11 A.M., telling her to come back with money

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from her father. The period of occurrence is given as January 2016 to 28.01.2017.

5. On solemn affirmation on 22.02.2017 the account given was not the same. The complainant said that from January 2016 “they” used to tell her to bring three lakh rupees and a motorcycle from her father. When she said she could not ask for it, her *Bhaisur* said that money was needed to bring up her child properly. She still refused. The mother-in-law then said that her food be stopped and the husband dragged her by the hair, threw her down and beat her with kicks and fists. They also took away her mobile. She told her father everything and he came with people from her parental side and tried to make them understand but they stuck to the demand. Her father gave fifty thousand rupees to her mother-in-law, saying that it was their duty to keep his daughter well, that he would help them in future and he took six months’ time. When the six months passed and her father had not sent the money her *gotni*, the wife of the petitioner, started saying that her father was a liar. She replied that her father had given five lakh rupees in cash, jewellery and articles worth one and a half lakh rupees at the marriage. On 27.01.2017 all of them beat her, took her articles and jewellery and turned her out. She has a son two years old. After she came to her parental home her

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father again went to her matrimonial home to settle the matter but they did not agree and so she came to the court. Answering the Court she said that the child was with her and that her husband was an operator in the electricity board.

6. Three enquiry witnesses, Ramdahin Yadav, Ram Nandan Prasad and Chandradev Prasad, are said to have been examined. Their statements are not part of the paper book. The impugned order records that the learned Magistrate perused the complaint, the statement on solemn affirmation and the evidence of these witnesses and found sufficient ground to proceed against Deepak Kumar Verma @ Santu, Sunaina Devi and Pankaj Bharti.

7. The petition was filed in March 2018. By the order dated 05.08.2025 this Court stayed the further proceeding against the petitioner, the *Bhaisur*, from that date. The learned S.D.J.M., Gaya was asked to proceed against the other accused and to conclude the case within six months, it being an old case. The status report dated 08.10.2025 shows that the trial against the other accused is at the stage of evidence after charge, the charge under Section 498A IPC and Section 4 of the Dowry Prohibition Act having been framed on 21.08.2023. One witness has been examined and another partly cross examined.

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8. Learned counsel for the petitioner has submitted that the petitioner is the elder brother of the husband and is in the service of the Bihar State Food and Civil Supplies Corporation, posted at Mahua in the district of Vaishali and that he lives with his own family. On 27.01.2017 he was on duty at Mahua and the attendance sheet of the month and the daily report of the godown for that date have been annexed. The quarrel, according to him, was between the husband and the wife and it was settled between them. For this he relies on a panchayati paper signed by the complainant, a *shapathnama* of the husband dated 14.05.2017 and an *ekrarnama* dated 21.08.2017 executed by the husband and the wife. He submitted that the petitioner has been made an accused only because he is the elder brother and that the case falls in the first and the seventh categories laid down in *Bhajan Lal*.

9. The prayer has been opposed by the learned APP for the State and by learned counsel for the Opposite Party No. 2. It was submitted that the demand of three lakh rupees and a motorcycle is put directly in the mouth of the petitioner, that the money given by the father reached his hand and that the plea of his being on duty elsewhere is a defence to be taken at the trial. No counter affidavit has been filed on behalf of the Opposite Party No. 2.

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10. This is not a complaint in which the petitioner is mentioned only in a list. The demand of three lakh rupees and a motorcycle is put in his mouth . The petitioner is alleged to have stated that she should demand money for well betterment of her child. The rest of the complaint, so far as he is concerned, speaks only of “all the accused”. In the considered view of this Court asking a lady to seek money for betterment of her son does not make out a case on which the petitioner should be sent for trial.

11. The statement on solemn affirmation is the complainant’s own account given on oath. It is on the complaint, that statement and the enquiry evidence that the Magistrate decides whether there is ground to proceed. Reading the complaint along with that statement is not weighing evidence. Both are her own words and both were before the learned Magistrate. On oath the demand is a demand of “they”, running from January 2016. What is left for the petitioner is a remark, made when she had already refused, that money was needed to bring up her child properly. Nothing further is said against him. The stopping of food is the mother-in-law’s word and the beating that day is by the husband. The fifty thousand rupees, which in the complaint reached the hand of the petitioner, went on oath to the mother-in-law. So the one act that could have shown the petitioner receiving anything

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from her family has been placed by the complainant herself with another accused. After six months the taunt is from the petitioner's wife. For 27.01.2017 the statement on oath says only that all of them beat her and turned her out.

12. Under the Explanation to Section 498A IPC cruelty means either willful conduct of a nature likely to drive the woman to suicide or to cause grave injury or danger to her life, limb or health, which is clause (a), or harassment with a view to coercing her or her relatives to meet an unlawful demand for property or valuable security, which is clause (b). This is a dowry complaint and clause (b) is the one to be looked at. Harassment with a view to coercing is conduct directed at forcing the demand to be met. A remark by the husband's elder brother on one undated day about the need of money for the child, followed by nothing from him, does not answer that description. The food being stopped, the beating, the ultimatum and the turning out are either attributed to others or to everybody in a lump. In ***Sanjay D. Jain and Others v. State of Maharashtra and Others*** reported in ***2025 SCC OnLine SC 2090***, the Hon'ble Supreme Court, after noticing that there was one specific demand of clothes and jewellery made over the telephone by the mother-in-law, has held as follows:-

"10. ... It is also to be noted that for the purpose of constituting an offence punishable

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> *under Section 498-A of the Penal Code, cruelty as indicated in the Explanation to the said provision must be stated to be inflicted. The cruelty caused by the husband and his family members should be of such nature that it is inflicted with the intention to cause grave injury or drive the victim to commit suicide or inflict grave injury to herself. Such allegations are absent in the present case. We do not find that on a complete reading of the complaint, a* prima facie *case for proceeding under Section 498-A of the Penal Code has been made out against the appellants."*

13. Section 4 of the Dowry Prohibition Act, the section punishes the demand of dowry, directly or indirectly, from the parents or relatives of the bride. Whether the remark about the child's upbringing amounts to such a demand by the petitioner need not be gone into. The demand, on oath, is of the family as a whole, made from January 2016 onwards. The complaint and the statement on oath differ on the only two points on which the petitioner is set apart from the others. A summoning order resting on that much required at least some consideration of the role of each accused. The impugned order has none.

14. The Hon'ble Supreme Court in ***Kahkashan Kausar alias Sonam and Others vs. State of Bihar and Others*** reported in ***(2022) 6 SCC 599***, which arose from this very State, took note of

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the tendency to array every relative of the husband in matrimonial cases. After noticing ***K. Subba Rao vs. State of Telangana***, it has been held as follows:-

> *"17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.*
>
> *18. ... Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus*

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and can at best be said to have been made out on account of small skirmishes."

15. Much was said about the posting of the petitioner at Mahua and his duty there on 27.01.2017. Those papers are matters of defence. Their worth cannot be judged in this jurisdiction.

16. In ***Salib alias Shalu alias Salim v. State of U.P. and Others*** reported in ***2023 INSC 687***, the Hon'ble Supreme Court has held that the Court exercising jurisdiction under Section 482 Cr.P.C. is not confined to the averments alone and may look at the overall circumstances emerging from the record. Paragraph 26 of the said judgment reads in part as follows:-

"26. ... Therefore, it will not be just 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. 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 try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the

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materials collected in the course of investigation…."

17. The record contains three papers which the Opposite Party No. 2 has not disputed, though she has been represented here since the year 2023. On 14.05.2017, about three months after the complaint, the husband gave a *shapathnama* that he would keep his wife with honour once she withdrew Complaint Case No. 181 of 2017. On 21.08.2017 the husband and the wife executed an *ekrarnama* on stamp paper. It records that differences had arisen between them, that well wishers had brought about a settlement, that the husband would keep her with respect, that rupees one lakh forty seven thousand of household money lying in her account would go back to him and that both would withdraw their cases. The undated panchayati paper signed by the complainant speaks of quarrels over household matters with her husband, father-in-law, mother-in-law and *Bhaisur* and says that the two wished to live together in peace. The settlement did not last and the case against the husband and the mother-in-law is going on. Why it failed is not for this Court to see. These papers are not the basis of the conclusion reached. What they show is that the dispute, as the parties themselves understood it, was between the husband and the wife and over the money of the household.

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18. In ***State of Haryana and Others vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) SCC 335***, the first of the categories set out in paragraph 102 is as follows:-

"(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."

19. Taken at face value and read as the complainant put them on oath, the allegations do not make out an offence under Section 498A IPC or Section 4 of the Dowry Prohibition Act against the petitioner. The case falls in the first category. On the seventh category, which was also pressed, no finding is required.

20. Accordingly, the order dated 03.01.2018 passed by the learned Sub Divisional Judicial Magistrate, Gaya in Complaint Case No. 181 of 2017, so far as it relates to the petitioner, is quashed. All further proceedings arising from it, so far as they relate to the petitioner, are also quashed.

21. The husband and the mother-in-law have not come to this Court. The case against them shall go on in terms of the order dated 05.08.2025 and nothing said here shall affect the trial against them.

22. Accordingly, the petition is allowed.

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23. Let a copy of this order be sent to the learned Sub Divisional Judicial Magistrate, Gaya for information.

(Ansul, J)

abhishekkr/-

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CAV DATE	14.10.2026
Uploading Date	
Transmission Date	

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