

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12038 of 2018

Arising Out of PS. Case No.-2316 Year-2013 Thana- GAYA COMPLAINT CASE District-
Gaya

=====

Aklima Khatoon @ Aalima Khatun W/o Late Masuque Khan, R/o Village-
Baidhpura, P.S.- Gunia, District- Gaya.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Jeba Khatoon W/o Shamim Khan @ Guddu S/o late Masuque Khan, R/o
Village- Salempur, P.S.- Dhovi, District- Gaya.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr.Rashid Izhar, Advcote
	:	Mr. SMI Quli, Advocate
For the Opposite Party/s	:	Smt. Veena Rani, APP
	:	Mr. Ashok Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

5 19-02-2026 Heard learned counsel for the petitioner, learned

counsel for the Opposite Party No.2 (O.P. No.2) as well as

learned A.P.P. for the State.

2. This petition has been filed for quashing the order
of cognizance dated 20.10.2014 passed by learned Sub-
Divisional Judicial Magistrate, Gaya (hereinafter referred to as
'Magistrate') in Complaint Case No. 2316 of 2013, wherein the
learned Magistrate took cognizance of the offences under
Section 498A of Indian Penal Code, 1860 and under Section 4
of the Dowry Prohibition At, 1981 against the petitioner and her
son Shamim Khan (husband of O.P. No.2).



3. The prosecution case, in brief, is that the marriage of O.P. No.2 (complainant) was solemnized with the son of the petitioner on 04.05.2007 according to Muslim rites and customs. It is alleged that at the time of marriage, a sum of Rs. 4,00,000/- along with ornaments and other articles was given by the parents of the O.P. No.2. After marriage, O.P. No.2 allegedly resided in her matrimonial home for about one year and gave birth to a male child. Subsequently, it is alleged that she was subjected to cruelty and torture on account of demand of additional dowry of Rs. 5,00,000/-. It is further alleged that due to lack of proper care and treatment, her second pregnancy resulted in abortion. Thereafter, she returned to her parental home. It is further alleged that her husband contracted a second marriage on 20.10.2012 and retained her ornaments and gifts. On these allegations, the complaint case was instituted. Furthermore, in course of inquiry, the complainant examined four witnesses in support of her case. Upon consideration of the complaint and the statements recorded during inquiry, the learned Magistrate took cognizance under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act against two accused persons, namely, Md. Shamim Khan (husband of O.P. No.2) and the petitioner (mother-in-law of O.P.



No.2).

4. Learned counsel for the petitioner submits that the impugned order dated 20.10.2014 passed by the learned Magistrate taking cognizance under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, is wholly illegal, mechanical and passed without proper application of judicial mind. Learned counsel submits that the learned Magistrate has failed to appreciate that the allegations made in the complaint petition are general, vague and omnibus in nature and do not disclose any specific overt act attributable to the petitioner, who is the mother-in-law of the complainant (O.P. No.2). It is further submitted that even if the entire complaint petition and the statements recorded during inquiry are taken at their face value, no *prima facie* case under Section 498A IPC is made out against the petitioner. Moreover, learned counsel submits that the witnesses examined during inquiry are interested witnesses being family members of the complainant (O.P. No.2) and none of them is an independent witness from the matrimonial village of the accused persons.

5. Learned counsel for the petitioner further submits that the marriage between the complainant and the son of the petitioner was solemnized on 04.05.2007 and, the O.P No.2 left



her matrimonial home shortly after the marriage and never resumed cohabitation despite repeated efforts. It is submitted that the matrimonial relationship eventually broke down and divorce was pronounced by the husband of O.P. No.2 on 20.09.2013 in accordance with Muslim personal law. It is further submitted that the dower (*mehr*) and *iddat* amounts were tendered to O.P. No.2 through money order, though the same was allegedly refused. Learned counsel also submits that the O.P. No.2 has subsequently contracted a second marriage in June, 2015 and is leading peaceful conjugal life with her new husband. She is blessed with a child from the said wedlock. The son of the petitioner who was husband of O.P. No.2 has also performed his second marriage and leading a peaceful conjugal life. Learned counsel further submits that the complaint case has been instituted only with an ulterior motive to harass the petitioner and her son and to exert pressure for monetary gain. It is further submitted that O.P. No.2 (complainant) has left her *pairvi* in the court of learned Magistrate which is evident from the order-sheet of the learned Magistrate which shows that complainant was absent since 05.07.2018.

6. Learned counsel for petitioner further submits that there was no demand of dowry at any point of time and the



allegations regarding demand of Rs.5,00,000/- are bald and unsubstantiated. It is submitted that the complaint lacks essential ingredients of Section 498A of the Indian Penal Code, namely, cruelty of such nature as is likely to drive the woman to commit suicide or to cause grave injury, or harassment in connection with unlawful demand of dowry. It is submitted that mere casual reference to torture without particulars cannot sustain criminal prosecution. Lastly, it is submitted that continuation of the criminal proceeding against the petitioner, who is an old lady of clean antecedent would amount to abuse of the process of the Court. It is, therefore, prayed that this Court, in exercise of its inherent jurisdiction to prevent abuse of process and to secure the ends of justice, quash the impugned order of cognizance as well as the entire criminal proceeding insofar as it relates to the petitioner.

7. Learned counsel for the O.P. No.2 submits that the materials brought on record during inquiry were sufficient for the learned Magistrate to form a *prima facie* opinion for taking cognizance and, at this stage, meticulous appreciation of evidence is neither required nor permissible. Learned counsel further submits that the defence taken by the petitioner regarding divorce, alleged desertion by the complainant,



subsequent remarriage, or tender of dower amount can be adjudicated during the course of trial.

8. Learned A.P.P. for the State submits that in view of the facts and circumstances of the case, the appropriate order may be passed by this Court in the interest of justice.

9. I have heard learned counsel for both the parties at length. I have also perused the materials available on record and the impugned order of cognizance dated 20.10.2014 passed by the learned Magistrate. The question which arises for consideration is whether the impugned order of cognizance in view of facts and circumstances of the case warrants interference in exercise of inherent jurisdiction of this Court.

10. It is well settled that at the stage of taking cognizance and issuance of process, the Magistrate is only required to ascertain whether a *prima facie* case is made out on the basis of the complaint petition and the materials brought on record during inquiry. The learned Magistrate is not expected to meticulously examine the evidence or adjudicate upon disputed questions of fact. At the same time, the order of cognizance must reflect application of judicial mind to the allegations and materials available on record. The inherent power of this Court under Section 482 of the Cr.P.C. is to be exercised sparingly,



carefully and with caution, only to prevent abuse of the process of the Court or to secure the ends of justice. If the allegations, even if taken at their face value and accepted in entirety, do not constitute the offence alleged, or where the proceeding appears manifestly attended with *mala fide* intention, this Court would be justified in quashing the same.

11. The Hon'ble Supreme Court in *Achin Gupta v. State of Haryana and Anr.*, reported in (2025) 3 SCC 756 has observed as under:

“35. In one of the recent pronouncements of this Court in Mahmood Ali v. State of U.P. [Mahmood Ali v. State of U.P., (2023) 15 SCC 488] , authored by one of us (J.B. Pardiwala, J.), the legal principle applicable apropos Section 482CrPC was examined. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482CrPC 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.”

(emphasis supplied)

12. Notably, the law with respect to quashing of criminal proceeding is now well settled that while considering a prayer to quash the criminal complaint and the consequential proceedings at the threshold, the Court is required to examine whether the allegations made in the complaint along with materials in support thereof make out a *prima facie* case to proceed against the accused or not. The reference to the same has been made by the Hon’ble Apex Court in various judgments including *State of Haryana and Ors. v. Bhajan Lal and Ors.*, reported in *1992 Supp (1) SCC 335* and *Pradeep Kumar Kesarwani v. State of Uttar Pradesh & Anr.*, reported in *2025 SCC OnLine SC 1947*.

13. Having heard the parties and upon perusal of the complaint petition and the impugned order of cognizance dated 20.10.2014, this Court finds that the allegations against the petitioner, who is the mother-in-law of the O.P. No.2, are general and omnibus in nature. The complaint contains broad allegations of demand of additional dowry and torture but does



not attribute any specific overt act, date, or particular instance of cruelty to the petitioner. No distinct role has been assigned to her separate from that of the husband. Also, the petitioner is an old lady who is in advanced stage of her life. It further appears that the dispute between O.P. No.2 and her husband arose out of matrimonial discord which ultimately culminated in divorce. The materials on record indicate that the allegations are primarily directed against the husband, and the implication of the petitioner appears to be by way of general accusation. Even if the allegations made in the complaint are taken at their face value and accepted in entirety, the essential ingredients of cruelty as contemplated under Section 498A of the Indian Penal Code and demand under Section 4 of the Dowry Prohibition Act are not *prima facie* established against the petitioner.

14. Applying the aforesaid legal principles to the facts of the present case, this Court finds that continuation of the criminal proceeding against the petitioner would amount to abuse of the process of the Court. The impugned order of cognizance dated 20.10.2014, insofar as it relates to the petitioner, therefore warrants interference in exercise of inherent jurisdiction to secure the ends of justice.

15. Accordingly, for the reasons recorded



hereinabove, this application is allowed. The order of cognizance dated 20.10.2014 passed by the learned Sub-Divisional Judicial Magistrate, Gaya in Complaint Case No.2316 of 2013, wherein the learned Magistrate took cognizance of the offences under Section 498A of Indian Penal Code, 1860 and under Section 4 of the Dowry Prohibition Act, 1981 is hereby quashed insofar as it related to the petitioner.

16. Resultantly, the entire criminal proceeding arising out of the aforesaid complaint case stands quashed against the petitioner.

17. Let a copy of this order be communicated to the learned Court concerned forthwith.

(Sunil Dutta Mishra, J)

rakhi/-

U			
---	--	--	--

