

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54397 of 2018

Arising Out of PS. Case No.-1057 Year-2016 Thana- NALANDA COMPLAINT CASE
District- Nalanda

Samir Kumar S/o Arvind Kumar, Resident of Mohalla- Samir Nagar, P.S.-
Chitragupta Nagar, District- Khagaria.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Smt. Jyoti Sinha @ Sunaina, Wife of Samir Kumar, Daughter of Rameshwar Prasad, Resident of Khashganj, P.S.- Sohsarai, District- Nalanda.

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 57130 of 2017

Arising Out of PS. Case No.-1057 Year-2016 Thana- NALANDA COMPLAINT CASE
District- Nalanda

1. Kiran Kumari and Anr W/o Late Prabhat Kumar, R/o Village- Sindiha, P.S.- Pasraha, District- Khagaria.
2. Shalu Deepak, D/o Arbind Kumar, R/o Samir Nagar, P.S.- Chitragupta Nagar, District- Khagaria.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Smt. Jyoti Sinha @ Sunaina, W/o Samir Kumar D/o Rameshwar Prasad, R/o Khashganj, P.S.- Sohsarai, District- Nalanda.

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 54397 of 2018)

For the Petitioner/s : Mr. Surendra Kumar Singh, Advocate
Mrs. Sudha Singh, Advocate

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

(In CRIMINAL MISCELLANEOUS No. 57130 of 2017)

For the Petitioner/s : Mr. Surendra Kumar Singh, Advocate

For the Opposite Party/s : Dr. Mrityunjaya Kr. Gautam, APP

CORAM: HONOURABLE MR. JUSTICE PRAVEEN KUMAR

ORAL ORDER

9 27-07-2026 Heard learned counsel for the petitioners and learned
counsel for the State. Even after several opportunities given to
Opposite Party No.2, he did not appear in this Court.

2. The petitioners have filed this application for
quashing of the order dated 24.01.2017, passed by the learned



A.C.J.M.-VII, Nalanda at Bihar Sharif in Complaint Case No. 1057(C) of 2016, whereby and whereunder the learned Magistrate has taken cognizance against the petitioners for the offences punishable under Sections 506, 498(A), 494 and 120(B) of the Indian Penal Code.

3. As per the allegation, it appears that after marriage, the complainant was subjected to mental and physical cruelty by her husband and in-laws, whereby a demand of dowry in the cash amount of Rs. 4 lakh and also one four-wheeler was raised and due to the non-fulfillment of the said demand, she was subjected to the aforesaid cruelty. The husband of the complainant, namely Samir Kumar, has preferred Cr. Misc. No. 54397 of 2018 while aunt-in-law and married sister-in-law (nanad) has preferred Cr. Misc. No. 57130 of 2017 for quashing the impugned order taking cognizance against the respective petitioners.

4. Learned counsel for the petitioners has submitted that the marriage between the complainant and her husband took place on 04.12.2005, the couple was blessed with a female child on 15.09.2006 and the complainant was able to secure a government job on 24.08.2013. It has further been submitted that the complainant willfully left the company of her husband



in his absence along with his daughter and all valuable ornaments on 24.08.2013 and when she did not join the company of her husband, the husband was forced to file an application for restitution of conjugal rights under Section 9 of the Hindu Marriage Act on 30.11.2013 before the learned Principal Judge, Family Court, Biharsharif, Nalanda vide Matrimonial Case No. 254 of 2013. The learned Family Court, Biharsharif, Nalanda took all steps for the appearance of the complainant in the said matrimonial case and after the gazette notification, the concerned Court proceeded to hear the application for restitution of conjugal rights *ex-parte*. It has further been submitted that when the husband of the complainant came to know that the complainant had performed second marriage on 24.09.2014, he simultaneously filed a complaint case vide Complaint Case No. 1280 (C) of 2014 under Sections 494 and 497 of the IPC. After enquiry, the learned Magistrate found the case to be true, took cognizance against the complainant under Sections 494 and 497 of the IPC and issued summons for appearance then ultimately an *ex-parte* order allowing the application of the husband for restitution of conjugal rights with the complainant was allowed on 20.01.2015. It has further been submitted that the petitioners



filed *Habeas Corpus* petition before this Court on 20.12.2013 for a direction to the complainant to produce the girl child before this Court to ensure the meeting of the petitioner with her daughter. It has further been submitted that however, the Division Bench, while hearing the *Habeas Corpus* application, disposed of the application of the husband with the liberty to move before the Principal Judge, Family Court, Biharsharif or Khagaria for the same relief as sought for in the *Habeas Corpus* application. It has further been submitted that when the aforesaid order was passed by the Division Bench, the husband has filed Miscellaneous Case No. 07 of 2014 seeking the custody of his minor daughter, but even after exhausting all processes by the Family Court including paper publication the complainant did not choose to appear and resultantly an *ex-parte* order was passed on 20.01.2015 directing the complainant to hand over the custody of the minor daughter to the husband within 30 days from the date of communication of the order personally to the complainant. It has further been submitted that an execution case was filed for the execution of the order dated 20.01.2015, then only on 25.09.2016, the complainant appeared before the Family Court, Khagaria by filing Miscellaneous No. 18 of 2016 for recalling the *ex-parte* order dated 20.01.2015.



The Miscellaneous Case No. 18 of 2016 filed under the provision of Order 9 Rule 13 of the C.P.C. with a defense that her husband had performed second marriage with one Pushpa Kumari and the husband is adamant to commit murder of the complainant and her daughter, on these grounds, she sought to recall of that order. It has further been submitted that only thereafter on 27.09.2016, the present complaint came to be filed. Learned counsel for the petitioners has further submitted that the allegations against the petitioners in both the application are false, concocted and have purposely been leveled to wreak vengeance and to spite personal score. It has further been submitted that no such occurrence ever took place. It has further been submitted that even accepting the entire occurrence to be true, the same took place within the territorial jurisdiction of the Khagaria Court, but purposely the present case has been filed at Nalanda and the case at Nalanda should not have proceeded, in view of the provision of Section 177 of the Cr.P.C. It has further been submitted that learned Magistrate took cognizance against the petitioners in a mechanical manner without applying the judicial mind.

5. Learned counsel for the petitioners has further referred to the judgment of Hon'ble Supreme Court in the case



of Nitin Ahluwalia vs. State of Punjab reported in 2025 IN 1138, and has submitted that adverse decrees in matrimonial suit for restitution of conjugal rights and child custody proceedings have resulted into retaliatory counterblast by the filing of the present complaint which is an abuse of the process of the Court. It has further been submitted referring to the said judgment that the aforesaid judgment which was adversely in favour of the complainant was a decisive maker of *mala fide* intent. It has further been submitted that the complaint filed immediately after adverse matrimonial litigation is a retaliatory counterblast and constitutes the abuse of the process of the Court. Learned counsel for the petitioners has further submitted that the quashing application with respect to Manju Verma and Arvind Kumar, who happen to be the Parents-in-law of the complainant was allowed by the judgment dated 26.06.2024 passed by a Co-ordinate Bench of this Court in Cr. Misc. No. 24858 of 2017.

6. Learned counsel, in view of the aforesaid factual background, referred to the judgment of the Hon'ble Supreme Court, as reported in the matter of **Abhishek vs. State of Madhya Pradesh** reported in **2023 SCC Online SC 1083** and has referred to Paragraph Nos. 13, 14, 15, 16 & 17 of the said judgment, which are reproduced hereinbelow:-



“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 inlaws 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.

(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 information 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 person 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 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.”

7. Learned counsel for the State has opposed the prayer of the petitioners and has submitted that the petitioners being thr husband and relatives of the husband have actively taken part in the commission of offence against the complainant. It has further been submitted that there are sufficient materials against the petitioners and the learned Magistrate has rightly taken cognizance against the petitioners finding the case *prima facie* true against them and hence no interference is required in the impugned order taking cognizance.

8. Heard the learned counsel for the parties and perused the records.



9. From the facts of the case, it is clear that the present complaint has been filed as a retaliatory counterblast to the adverse decrees against the complainant in the matrimonial suit for restitution of conjugal rights filed by the husband, the custody of the child being given to the husband and only after the execution case was filed and she did not appear in the said application for custody and an *ex-parte* order came to be passed against her and only when she filed a miscellaneous case for recalling that *ex-parte* order, the present complaint case came to be filed after two days. It further appears that the said adverse order was a decisive maker for her *mala fide* intent and the retaliatory counterblast constitutes, the abuse of the process of the Court. The present case has been filed with an oblique motive and vexatious intent, the continuation of the proceeding against the petitioners would amount to abuse of process of the Court, resultantly the order taking cognizance dated 24.01.2017 passed by the learned A.C.J.M.-VII, Nalanda at Biharsharif is hereby quashed.

10. This application is allowed.

(Praveen Kumar, J)

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