

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35684 of 2016

Arising Out of PS. Case No.-761 Year-2007 Thana- AURANGABAD COMPLAINT CASE
District- Aurangabad

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1. Amarnath Prajapatti, son of late Sheo Pujan Prajapatti.
2. Prem Nath Prajapatti, son of late Sheo Pujan Prajapatti
3. Kedar Prajapati, son of late Sheo Pujan Prajapati
4. Badri Nath Prajapati, son of late Sheo Pujan Prajapati.
5. Kashi Nath Prajapati, son of late Sheo Pujan Prajapati.
All resident of village Hamidganj, P.S. Daltonganj, Distt. Palamu (Jharkhand)
6. Sita Ram Prajapati, son of Sri Param Prajapati
7. Malti Devi, wife of Amar Nath Prajapati
Both are resident of village Golhana, P.S. Daltonganj, Distt. Palamu (Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar
2. Domini Devi, wife of Sri Amar Nath Prajapati, daughter of Sri Paran Prajapatti, r/o village Hamidganj, Mohalla Daltonganj, Police Station Daltonganj, Distt. Daltonganj, (Jharkhand), presently residing at village Mahrajganj, P.O. Hariharganj, P.S. Kutumba, Distt. Aurangabad (Bihar).

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar, Advocate. Mr. Ravi Kumar Pandey, Advocate. Ms. Preeti, Advocate.
For the State	:	Mr. Nagendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 25-02-2026

The present petition has been preferred for setting aside the order dated 02.07.2016 passed by learned Sub Divisional Judicial Magistrate, Aurangabad, in Complaint Case No. 761 of 2007 bearing corresponding Trial No. 103 of 2016 (Domini Devi Vs. Amar Nath Prajapati) whereby petition of the petitioners for discharge has been rejected, holding that at the stage of framing of charge, plea of no marriage between the



Complainant and Amar Nath Prajapati cannot be looked into.

2. I heard learned counsel for the petitioners and learned APP for the State.

3. Learned counsel for the petitioners submits that the petitioners are innocent and have falsely been implicated in the case. As a matter of fact, the petitioner No. 1/Amar Nath Prajapati has never married the Complainant/Domini Devi, who is claiming to be his wife. Hence, no offence under Section 498A of the Indian Penal Code or any other penal provisions is made out. In support of his submission, he brings it to the notice of the Court that vide order dated 10.03.2010 passed in Cr. Misc. 18050 of 2009, (Amarnath Prajapati Vs. State of Bihar), wherein the coordinate Bench of this Court has recorded that Domini Devi has failed to identify Amar Nath Prajapati as her husband. In pursuance of this observation of the co-ordinate Bench, another co-ordinate Bench of this Court vide judgment dated 05.05.2015 passed in Cr. Misc. No. 35168 of 2012, (Amarnath Prajapati Vs. State of Bihar and Domini Devi) has recorded its order mentioning that on the last occasion the counsel for the Complainant/Domini Devi was directed to explain the recording of the order of co-ordinate Bench in Cr. Misc. No. 18050 of 2009, but she did not appear to explain that



recording to the effect that Domini Devi had failed to identify the petitioner No. 1, Amar Nath Prajapati as her husband. Accordingly, the co-ordinate Bench of this Court quashed the entire proceedings including the order dated 30.03.2012 passed by learned Sub Divisional Judicial Magistrate, Aurangabad, in Complaint Case No. 410 of 2010 vide judgment dated 5.5.2015 passed in Cr. Misc. No. 35168 of 2012.

4. Learned counsel for the petitioners also refers to order dated 22.05.2024 passed by learned Principal Judge, Family Court, Aurangabad, in Maintenance Case No. 211 of 2015 filed by Domini Devi against Amar Nath Prajapati who is petitioner No. 1 herein, wherein learned Principal Judge has dismissed the Maintenance petition holding that Domini Devi has not proved the relationship between herself and Amar Nath Prajapati as wife and husband.

5. Learned counsel for the petitioners further submits that petitioner No. 1, Amar Nath Prajapati is claimed to be husband of the Opposite Party No. 2, other petitioner Nos. 2 to 5 are brothers of petitioner No. 1 whereas petitioner Nos. 6 and 7 are father and mother of legally wedded wife of Amar Nath Prajapati.

6. However, learned APP for the State opposes the



prayer of the petitioners for setting aside the impugned order whereby learned Trial Court has rejected the application of the petitioners for discharge. The ground given by learned Trial Court in the impugned order is unassailable. It is settled principle of law that at the stage of framing of charge, only a *prima facie* case is required to be made out as per unrebutted alleged facts and circumstances and as per material on record, five witnesses have been examined by learned Court below before framing of charge to the effect that there was relationship of husband and wife between Petitioner No.1/Amar Nath Prajapati and Opposite Party No.2/Domini Devi.

7. He further submits that plea of the Petitioner that there was no marriage solemnized between petitioner no.1/Amar Nath Prajapati and Opposite Party No.2/Domini Devi is a defence which cannot be looked into at the stage of framing of charge. This plea can be looked into only during the trial. Hence, the Petitioner will have to wait for the trial and they would get liberty to prove their defence.

8. He further submits that the orders of co-ordinate Benches of this Court and even maintenance order passed by learned Principal Judge, Family Court do not help the petitioner because it is the Family Court which is competent to declare



the marital status of the parties in a conclusive way. No other court has any such jurisdiction to pass any decree in this regard. Any finding of other court, except the Family Court in matrimonial suit between the parties, are only tentative and may be persuasive in nature, but that cannot be a conclusive proof. Hence, despite the orders of learned co-ordinate Benches of this Court and learned Principal Judge, Family Court, Aurangabad, in regard to marriage between Amar Nath Prajapati and Domini Devi, the petitioners are required to prove the plea of defence only during trial.

9. I considered the submissions advanced by both the parties and perused the materials on record.

10. It is settled principle of law that, at the stage of framing of charge, only a *prima facie* case as per uncontroverted facts and circumstances of the prosecution case is required to be made out. The Court cannot conduct mini trial at the stage of framing of charge. The accused persons have to wait for the trial to prove their defence. Here one may refer to **Nilesh Kumar Singh Vs. State of Bihar** as reported in **2024 SCC OnLine Pat 6335** and decided by this Court. Here this Court has discussed in detail what is requirement for framing of charge against an accused, after referring to the following judicial precedents :



- (i) U.O.I. Vs. Prafulla Kumar Samal, (1979) 3 SCC 4
- (ii) State of Maharashtra Vs. S. N. Thapa,
(1996) 4 SCC 659
- (iii) State of M.P. Vs. Mohanlal Soni, (2000) 6 SCC 338
- (iv) K. Ramakrishna Vs. State of Bihar, (2000) 8 SCC 547
- (v) State of Orissa Vs. D. N. Padhi, (2005) 1 SCC 568
- (vi) Soma Chakravarty Vs. State, (2007) 5 SCC 403
- (vii) Onkar Nath Mishra Vs. State (NCT of Delhi),
(2008) 2 SCC 561
- (viii) P. Vijayan Vs. State of Kerala, (2010) 2 SCC 398
- (ix) Sajjan Kumar Vs. CBI, (2010) 9 SCC 368
- (x) Amit Kapoor Vs. R. Chander, (2012) 9 SCC 460
- (xi) State of T.N. Vs. N. S. Rajan, (2014) 11 SCC 709
- (xii) State of Karnataka Vs. M.R. Hiremath,
(2019) 7 SCC 515
- (xiii) Dipakbhai J. Patel Vs. State of Gujarat,
(2019) 16 SCC 547
- (xiv) State of Odisha Vs. Pratima Mohanty,
2021 SCC OnLine SC 1222
- (xiv) Saranya v. Bharathi, (2021) 8 SCC 583
- (xvi) Ghulam H. Beigh Vs. Mohd. Maqbool Magrey,
(2022) 12 SCC 657
- (xvii) CBI Vs. Aryan Singh, 2023 SCC OnLine SC 379
- (xviii) State of T.N. Vs. R. Soundirarasu,
(2023) 6 SCC 768

11. After discussing the judicial precedents in Nilesh



Kumar Singh Case (supra), this Court has held as follows :

“38.....

The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. The Court can interfere only if the allegations are found to be so patently absurd and inherently improbable that no prudent person can believe such an allegation or where the basic ingredients of a criminal offence are not satisfied as per the material on record.

39. It also emerges that at the stage of framing charge, the Court is not required to conduct a mini trial. It is required to consider the material on record only with a view to find out if there is a ground for presuming that accused had committed the offence, and not to see whether prosecution has made out a case for conviction of the accused. At this stage, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true. The truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously examined. Nor is any weight to be attached to the probable defence of the accused. The court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. Even strong suspicion based on material on record is sufficient to frame charge.”

12. Moreover, it is also settled principle of law that only Family Court/Civil Court is competent to pass any decree in regard to marital status of the parties and any order in regard to marital relationship by any other court is only tentative and may be persuasive, but, in no case conclusive. Hence, there is no conclusive proof on record to show that petitioner No. 1/Amar Nath Prajapati is not husband of Domini Devi.

13. Here, one may refer to **Balram Yadav Vs.**



Fulmaniya Yadav, as reported in **(2016) 13 SCC 308**, wherein Hon'ble Supreme Court was dealing with the jurisdiction of a Court for declaring marital status of the parties. Here, Hon'ble Supreme Court referred to the Family Courts Act, 1984 and held as follows:

“7. Under Section 7(1) Explanation (b), a suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, since under Section 8, all those jurisdictions covered under Section 7 are excluded from the purview of the jurisdiction of the civil courts. In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or a negative relief. What is important is the declaration regarding the matrimonial status. Section 20 also endorses the view which we have taken, since the Family Courts Act, 1984, has an overriding effect on other laws.”

14. Following the **Balram Yadav case (supra)**, the High Court of Chhatisgarh at Bilaspur has also expressed the similar view, holding as follows:

“**13.** From the above stated legal provisions of the Family Courts Act and also considering the object of the establishment of the Family Courts Act, it is quite vivid, that in case there is dispute on the matrimonial status of any person a declaration in that regard has to be sought only before the Family Court. Section 20 of the Act, 1984 also provides that the provisions of this Act shall have overriding effect and Section 8 of the Act also provides exclusion of jurisdiction which has been enumerated in Section 7 of the Act as well as proceedings under Chapter 11 of the CrPC. In the present facts of the case, the plaintiff is claiming illegitimacy of a child whether it is affirmative relief or negative relief what is important, is the declaration regarding the matrimonial status.....”



15. One may also refer to **Santosh Vs. Suresh Pal**, as reported in **(1998) 8 SCC 447**, wherein Hon'ble Supreme Court has held that finding of Court under Section 125 Cr.PC regarding marital status of the party is tentative, subject to final adjudication of marital status by the Civil Court/Family Court. The relevant paragraph of the judgment may be referred to is as follows:

“2. We have heard learned counsel for the parties finally by their consent. The short question is whether the appellant is the married wife of the respondent who had failed and neglected to maintain her and therefore, she is entitled to maintenance under Section 125 of the Code of Criminal Procedure. Learned counsel for the respondent was right when he contended that unless there is a legal marriage between the parties, order under Section 125 CrPC cannot be passed. However, learned Judicial Magistrate after considering this question came to the conclusion that the respondent was already divorced from his first wife and thereafter he had entered into a second marriage with the appellant who was also a divorcee. The High Court took the contrary view and observed that the appellant had not proved that she was the married wife of the respondent and that she had her first husband, Satendra and there was no dissolution of her marriage with him. These are the questions which are required to be thrashed out finally in civil proceedings. In a proceeding for maintenance under Section 125 CrPC the learned Magistrate was expected to pass appropriate orders after being prima facie satisfied about the marital status of parties. It is obvious that the said decision will be a tentative decision subject to final order in any civil proceedings, if the parties are so advised to adopt. Consequently, in our view the High Court was not justified in interfering with the pure finding of fact reached by learned Judicial Magistrate in a proceeding under Section 125 CrPC and therefore only on this short ground and without expressing any opinion on the marital rights of the parties which may have to be adjudicated in civil proceedings, the order of the learned Magistrate passed under Section 125 CrPC will have to be affirmed



and the judgment and order of the High Court is set aside.
The appeal is allowed. No costs.”
(Emphasis Supplied)

16. Coming to the case on hand, I find that there is no material on record which may be treated as conclusive proof to show that the petitioner No. 1/Amarnath Prajapatti is not the husband of O.P. No. 2/Domini Devi and on the other hand, there is pre-charge evidence on record to show that the petitioner No. 1/Amarnath Prajapatti had solemnized marriage with O.P. No. 2/Domini Devi. In view of such facts and circumstances along with other allegations made by O.P. No. 2 against the petitioners, there is sufficient material to frame charge against them.

17. Hence, I find no illegality or impropriety in the impugned order whereby learned Trial Court has dismissed the application of the petitioners for discharge.

18. Accordingly, the present petition stands dismissed.

(Jitendra Kumar, J.)

S.Ali/Shoaib

AFR/NAFR	AFR
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