

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19766 of 2017

Arising Out of PS. Case No.-342 Year-2016 Thana- BETTIAH CITY District- West
Champaran

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Alamger Ashaf @ Alamgir Mian Son of Nesar Ahmad, R/o Village- Ujjain
Tola, Ward No. 34, P.S. Bettiah Town District- West Champaran.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Irfat Khatoon, W/o Shakil Penter, R/o Ujjain Tola, Ward No. 34, P.S.-
Bettiah Town, District- West Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bimlesh Kumar Pandey, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE PRAVEEN KUMAR

ORAL ORDER

4 24-07-2026 Heard learned counsel for the petitioner and learned
APP for the State. There is no representation on behalf of the
Opposite Party No. 2, even after valid service of notice.

2. The petitioner has challenged the order taking
cognizance dated 28.10.2016 passed by the learned C.J.M.,
Bettiah, West Champaran, in Trial No. (240/16)/(238/17) arising
out of Bettiah Town P.S. Case No. 342 of 2016, whereby and
whereunder the learned C.J.M., differing with the police report,
took cognizance under Section 498A of I.P.C. also against the
petitioner.

3. As per the allegation, co-accused persons, who
happen to be the family members of the informant-complainant



used to torture the complainant-informant as regards demand of dowry and for non fulfillment of the same. It has further been alleged that this petitioner, who has been described as ward member, along with co-accused Tabarak Mian and fifteen other persons, came at the house of the informant and assaulted her and her children in a drunken condition and also locked the house and made them hostage and also threatened that if extortion money to the tune of Rs. 3,00,000/- is not paid, then her children will face the dire consequences.

4. Learned counsel for the petitioner has submitted that accused nos. 1 to 4 in the complaint are family members of the husband of the complainant and the petitioner is neither related with the family members or the in-laws of the complainant nor connected in any manner whatsoever with them. Learned counsel for the petitioner has also referred to Section 498A of the Indian Penal Code and has categorically submitted that only husband or her relatives can be made accused in an offence under Section 498A. It has further been submitted that although the FIR came to be registered for the offence under Section 147, 148, 149, 498A, 307, 354, 387, 452, 504 of the Indian Penal Code as well as Section 3 and 4 of the Dowry Prohibition Act, but the police after thorough



investigation found the allegations to be false against all the accused persons of this case including the petitioner, but the learned Magistrate differed with the final form and took cognizance against the petitioner in a mechanical manner without applying judicial mind. It has further been submitted that the present prosecution against the petitioner is attended with malicious, personal vendetta and to spite personal score and the same is vexatious and malicious in nature. It has further been submitted that there is no allegation of demand of dowry or torture for non-fulfillment of the same against the petitioner. It has further been submitted that the learned Magistrate has not found the case true, at least for the offences with respect to extortion, house trespass, attempt to murder as well as attempt to outrage the modesty of Opposite Party No. 2 and has taken cognizance only under Section 498A of the Indian Penal Code, when the same is not applicable against the petitioner.

5. Learned A.P.P. for the State vehemently opposed the prayer of the petitioner.

6. Heard the parties and perused the records.

7. Considering the facts and circumstances as well as the fact that the petitioner is not a family member of the in-laws of the informant and the fact that the final form came to be



submitted and cognizance came to be taken against the petitioner under Section 498A IPC, which is not applicable against him, the prosecution against the petitioner is held to be vexatious and malicious, and resultantly, the impugned order taking cognizance dated 28.10.2016 passed by the learned C.J.M., Bettiah, West Champaran, in Trial No. (240/16)/(238/17) arising out of Bettiah Town P.S. Case No. 342 of 2016 is hereby quashed.

8. This application stands allowed.

(Praveen Kumar, J)

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