

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1134 of 2018

Arising Out of PS. Case No.-857 Year-2013 Thana- NALANDA COMPLAINT CASE
District- Nalanda

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1. Dipak Kumar and Ors S/o Gyaneshwar Das.
 2. Nirmala Devi, W/o Dipak Das @ Dipak Kumar,
 3. Ritu Kumari, D/o Gyaneshwar Das,
 4. Dipika Kumari, D/o Gyaneshwar Das, All resident of Mohalla- Hussainganj, P.O. P.S.- Barh, District- Patna.

... .. Petitioner/s

Versus

1. State of Bihar and Anr
2. Rekha Kumari, D/o Niraj Kumar, resident of Mohalla- Hussainganj, P.O. P.S.- Barh, District- Patna, present address D/o Vijay Das, Village- Khawasa, P.O.- Chero, P.S.- Harnaut, District- Nalanda.

... .. Respondent/s

with
CRIMINAL REVISION No. 1067 of 2018

Arising Out of PS. Case No.-857 Year-2013 Thana- NALANDA COMPLAINT CASE
District- Nalanda

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1. Niraj Kumar and Ors S/o Gyaneshwar Das,
 2. Gyaneshwar Das S/o late Baldeo Das,
 3. Bimla Devi W/o Gyaneshwar Das, All R/o Mohalla- Hussainganj, P.O. P.S.- Barh, District- Patna.

... .. Petitioner/s

Versus

1. State of Bihar and Anr
2. Rekha Kumari W/o Niraj Kumar, R/o Mohalla- Hussainganj, P.O. P.S.- Barh, District- Patna, present Address D/o Vijay Das, Vill.- Khawasa, P.O.- Chero, P.S.- Harnaut , District- Nalanda.

... .. Respondent/s

Appearance :

(In CRIMINAL REVISION No. 1134 of 2018)

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the Respondent/s	:	Mr. Sri Surendra Kumar, Advocate
For the State	:	Mr. Burendra Kumar, A.P.P.
For the O.P. No.2	:	Mr. Krishna Deo Rai, Advocate

(In CRIMINAL REVISION No. 1067 of 2018)

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the Respondent/s	:	Mr. Sri Shyameshwar Dayal, Advocate
For the State	:	Mr. Burendra Kumar, A.P.P.



For the O.P. No.2 : Mr. Krishna Deo Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

11 09-04-2026 Heard learned counsel for the parties concerned.

2. The present Revision application has been filed against the order dated 09.07.2018 passed by the learned S.D.J.M., Nalanda at Bihar Sharif in Complaint Case CR. No. 857(C) of 2013. by which the discharge petition filed by the petitioners under Section 245 Cr.P.C. has been rejected.

3. The prosecution case, based on the complaint, in short, is that the complainant, Rekha Kumari, filed a complaint before the learned C.J.M., Nalanda, stating therein that her marriage with accused No. 1, namely Neeraj Kumar, was solemnized on 12.06.2010. It has further been stated that the complainant is working as a teacher in Middle School, Pratappur, Lakhisarai, and after her marriage she started visiting the school by train. After few days of marriage, the accused persons started demanding Rs. 2 lakh from the complainant and her family members for starting a business for her husband. When the demand was not fulfilled, the accused persons started abusing and torturing the complainant. The husband stopped talking to the complainant, and proper meals were not provided to her by the accused persons.



4. The learned Magistrate took cognizance against the petitioners, namely Dipak Kumar and Nirmala Devi, under Sections 341, 323, 379, and 498A of the Indian Penal Code, and against Ritu Kumari and Dipika Kumari under Sections 323 and 379 of the Indian Penal Code. After completion of the appearance of the accused, the case was fixed for evidence before charge under Section 244 Cr.P.C. Altogether five witnesses (CWs) were examined at the stage of evidence before charge. A discharge petition was filed by the petitioners on 19.01.2018, which was dismissed by the learned S.D.J.M., Nalanda, vide order dated 09.07.2018.

5. Ms. Adya Pandey, learned counsel appearing for the petitioners, argued that there is no material to connect the petitioners with the present offence inasmuch as in the evidence before charge, no specific allegation has been made against the petitioners by the CWs. Only general and omnibus allegations have been made against them. The petitioners are family members of the husband of the complainant; petitioner No. 1 is the brother of the husband of the complainant, petitioner No. 2 is the wife of petitioner No. 1, and petitioners Nos. 3 and 4 are the sisters of the husband of the complainant. The entire family members of the husband of the complainant have been roped in



the present case in order to harass them. The learned Trial Court, in a mechanical manner and without application of proper judicial mind and without verifying the materials available in the evidence collected before charge, has passed the impugned order. The Trial Court did not take any effort to look into the evidence before charge before passing the impugned order.

6. Learned counsel placed the depositions of the CWs and the complainant, recorded at the stage of evidence before charge, and submits that none of the witnesses has stated anything against the petitioners. Only general and omnibus reference to the petitioners has been made.

7. It has been submitted by learned counsel for the petitioners that Criminal Revision No. 1067 of 2018, filed by the husband, father-in-law, and mother-in-law of the complainant against the order dismissing their discharge petition, has been dismissed by this Court vide order dated 15.02.2024

8. Learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court in case of ***Dara Lakshmi Narayana v. State of Telangana, reported in (2025) 3 SCC 735***, and ***Sanjay Kumar Rai v. State of Uttar Pradesh and Anr., reported in (2022) 15 SCC 720***.

9. On the other hand, Mr. Krishna Deo Rai, learned



counsel for the complainant-opposite party No. 2 argued that in the complaint petition there is specific allegations against the petitioners, and cognizance was taken by the learned Magistrate against petitioner Nos. 1 and 2 under Section 498A and other Sections of the I.P.C.

10. I have heard learned counsel for the parties and have gone through the materials on record, including the impugned order Chapter XIX of Cr.P.C., 1973 deals with the trial of warrant cases by Magistrate, and part of the said chapter is relating to cases instituted otherwise than on police report. Section 244 and 245 Cr.P.C. is quoted as follows:-

244. Evidence for prosecution.—

(1) When, in any warrant-case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

245. When accused shall be discharged.—

(1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the



accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

11. From perusal of Section 244 Cr.P.C., it appears that in warrant case instituted otherwise than police report, when the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. Section 245 deals with the discharge of the accused, which says that upon taking all the evidence referred to in Section 244, if the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant conviction, the Magistrate shall discharge him.

12. From perusal of the impugned order, it appears that the learned S.D.J.M., Nalanda has arrived at the conclusion that the witnesses have supported the allegations against the above-named accused persons and the court has found a prima facie case against the petitioners. This Court has examined the statements of five witnesses who were examined as CWs at the



stage of evidence before charge, and from perusal of their statements, this Court is satisfied that the witnesses have not stated anything specific against these petitioners. Only omnibus statements have been made against these petitioners, whereas there is some specific allegations against other accused persons, i.e., the husband, mother-in-law, and father-in-law. Relying upon the same, a Co-ordinate Bench of this Court has rejected the revision application filed by them against the order of the learned S.D.J.M., Nalanda refusing to discharge.

13. In *Dara Lakshmi Narayana* (supra), the Hon'ble Supreme Court has made it clear that family members of the husband ought not to be unnecessarily roped into criminal proceedings arising out of matrimonial discord. The Court observed that it has become a recurring tendency to implicate every member of the husband's family, irrespective of their role or actual involvement, merely because a dispute has arisen between the spouses. It was further held that where the allegations are bereft of specific particulars, and particularly where the relatives sought to be prosecuted are residing separately and have had no connection with the matrimonial home, allowing the prosecution to proceed would amount to an abuse of the process of law. The criminal law is not to be



deployed as an instrument of harassment, and judicial scrutiny must be exercised to guard against such misuse.

14. In *Sanjay Kumar Rai* (supra), the Hon'ble Supreme Court has held that while deciding an application for discharge, the Court should not act as a post office but must consider the materials accompanying the police report and then arrive at a conclusion as to whether, on the basis of such materials, an offence is made out or whether there is evidence sufficient to sustain the charge against the accused.

15. This Court, upon perusal of the entire materials, including the evidence of the witnesses recorded before charge, comes to the conclusion that the materials emerging from the evidence before charge, on their face value, do not disclose any prima facie case against the petitioners and is also lacking in the ingredients necessary for the offences alleged. The learned court below has acted like a post office and has rejected the discharge application of the petitioners in a mechanical manner, without applying its mind or properly examining the statements of the witnesses recorded before charge. Allowing the prosecution to continue against the petitioners shall cause miscarriage of justice and unnecessary harassment to them in abuse of the process of court. Accordingly, this Court comes to the conclusion that the



impugned order dated 09.07.2018 passed by the learned
S.D.J.M., Nalanda cannot be sustained.

16. In the result, the impugned order dated 09.07.2018
passed by the learned S.D.J.M., Nalanda is set aside and the
petitioners are discharged.

(Anil Kumar Sinha, J)

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