

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73383 of 2019

Arising Out of PS. Case No.-60 Year-2018 Thana- SHRIKRISHNAPURI District- Patna

Mukesh Kumar, son of Sri Vinod Kumar Resident of Mohalla - Akhara Ghat,
Nazipur, P.S.- Ahiyapur, District- Muzaffarpur

... .. Petitioner

Versus

1. The State of Bihar
2. Sonal Kumari @ Sonal Singh, D/O - Shri Shailesh Kumar Singh, R/O -
House No. 04, Road No.8, West Anandpuri, Boring Canal Road, Patna, P.S.-
S.K. Puri, District- Patna

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Rakesh Kumar Samrendra, Advocate Mr. Harsh Vardhan, Advocate Mr. Manager Sah, Advocate
For the State	:	Mr. Shailendra Kumar, APP Mr. Jharkhandi Upadhyay, APP
For the Opp. Party No.2	:	Dr. Alok Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.A.V. JUDGMENT
Date : 01-05-2026

This application has been filed challenging the order dated 16.07.2018 passed by the learned Additional Chief Judicial Magistrate, Patna, whereby the learned Magistrate has taken cognizance against the petitioner for the offence under section 498-A of the Indian Penal Code and under section 3 and 4 of the Dowry Prohibition Act in connection with Shri Krishnapuri P.S. Case No.60 of 2018.

2. The petitioner is the husband of opposite party no.2 and, at the relevant time, he was working at Ordnance



Factory, Katni, Madhya Pradesh, as Charge Man.

3. The present F.I.R. was instituted on the basis of a typed complaint lodged by the informant-opposite party no.2 i.e. the wife of the petitioner *inter alia* alleging that her marriage was solemnized with the petitioner according to Hindu rites and rituals on 10.07.2016 and at the time of marriage, the parents of the informant gave Rs.10,00,000/-, Swift Car, gold ornaments and other household articles to the family members of her husband, but she was subjected to cruelty by the petitioner and his family members for demand of dowry. It is also alleged that on 28.04.2017, the informant gave birth to a male child. It is next stated that the informant was doing B.D.S. from Patna and her husband was working in the Ordnance Factory, Government of India at Katni, Madhya Pradesh.

3.1. It is next alleged that the accused persons used to demand Rs.8,00,000/- as dowry from the family members of the informant and on account of non-fulfillment of the same, they used to torture the informant. It is further alleged by the informant that the petitioner had an extra marital relationship with another lady with whom he was allegedly living. Based on the aforesaid written complaint, the present F.I.R. vide. Shri Krishnapuri P.S. Case No.60 of 2018 came to



be registered against the petitioner and his family members.

4. Upon completion of investigation, the Police submitted charge-sheet on 30.06.2018 against the petitioner and other accused persons under sections 498-A read with section 34 of the Indian Penal Code and under sections 3 and 4 of the Dowry Prohibition Act. Thereafter, the learned A.C.J.M., Patna took cognizance against the accused persons including the petitioner under section 498-A of the Indian Penal Code and under section 3 and 4 of the Dowry Prohibition Act.

5. The learned counsel for the petitioner, at the outset, has submitted that the informant is the wife of the petitioner and has instituted the present case as a counter blast to the Matrimonial Case No.63 of 2018, which was filed by the petitioner on 27.02.2018 itself, whereas, the present F.I.R. came to be registered on 17.03.2018.

6. Learned counsel for the petitioner has further submitted that the informant is in habit of making frivolous allegation against the petitioner and his family members and in this regard, the petitioner had filed a representation dated 14.08.2017 to the Superintendent of Police, Katni, Madhya Pradesh. He has further submitted that the informant along with unknown persons on 05.02.2018 went to the house of the



petitioner at Muzaffarpur and tried to set ablaze her matrimonial house and for this incident an Informatory Petition dated 16.02.2018 has been filed before the Sub-Divisional Magistrate, Muzaffarpur. Adverting to the aforesaid representation dated 14.08.2017 and the Informatory Petition dated 16.02.2018, it has been submitted that the real fact is that the petitioner and his family members are the real victim.

7. It has also been submitted by learned counsel for the petitioner that the informant after quarreling with the petitioner tried to harm herself with a view to implicate the petitioner and his family members in a criminal case, which compelled the petitioner to file a representation before the Senior Superintendent of Police, Muzaffarpur on 12.03.2018.

8. It has categorically been submitted that though in the F.I.R. allegation has been made by the informant that the petitioner was having an extra marital affair with another lady, but the real fact is that the informant was the one having an illicit relationship with one Manish Kumar Pandey, who, at the relevant time, was posed as Judicial Magistrate, 1st Class, Aurangabad and the present informant had also lodged an F.I.R. against said Manish Kumar Pandey vide Aurangabad Nagar P.S. Case No.775 of 2022 dated 06.12.2022 wherein she



had made allegation that the aforesaid Manish Kumar Pandey had established sexual relationship with her on the pretext of marriage. It is vehemently argued by learned counsel for the petitioner that the informant, being the lawfully wedded wife of the present petitioner, not only had an illicit relationship with another person, but further from the reading of the aforesaid F.I.R. vide Aurangabad Nagar P.S. Case No.775 of 2022, it is apparent that the present informant had infact married the aforesaid Manish Kumar Pandey.

9. Learned counsel for the petitioner has also submitted that from the perusal of the F.I.R., it is evident that only vague and bald allegations have been made against the petitioner and as such, the prosecution stands vitiated on the strength of the judgment of the Hon'ble Supreme Court in the case of *Pritam Ashok Sadabhule vs. the State of Maharashtra & Ors.* reported as (2015) 11 SCC 769.

10. Learned counsel for the petitioner has drawn the attention of this Court to an order dated 28.08.2023 passed by a Co-ordinate Bench of this Court in Criminal Miscellaneous No.74859 of 2018 titled as '*Anjana Rani @ Rubi Devi & Ors. vs. State of Bihar & Anr.*', by which the impugned order of cognizance dated 16.07.2018 has been quashed *qua* the



petitioners therein, who were married sisters-in-law and the brother-in-law of the informant. Lastly, it has been submitted by learned counsel for the petitioner that criminal law cannot be used as an instrument for settling the matrimonial dispute and to extract vengeance. In support of this submission, learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of ***Dara Lakshmi Narayana & Ors. vs. State of Telangana & Anr.*** reported as **2024 SCC OnLine SC 3682**.

11. By making the aforesaid submissions, it has been submitted by learned counsel for the petitioner that the impugned order of cognizance has been passed mechanically without application of judicial mind and therefore, the same is unsustainable in law.

12. A counter affidavit has been filed on behalf of the opposite party no.2- informant wherein, at the outset, the facts of the F.I.R. has been reiterated. It has been stated in the counter affidavit that the parents of the opposite party no.2 had transferred the dowry amount in the bank account of the family members of the petitioner. It has also been stated that on 21.01.2018, the opposite party no.2 had submitted a *Sanha* before the Senior Superintendent of Police, Patna, alleging



torture at the hands of the petitioner and his family members, which has been forwarded to the Mahila Police Station, Gandhi Maidan, and notice was also issued to the petitioner. Thereafter, on 23.02.2018, the opposite party no.2 had filed another *Sanha* before the Senior Superintendent of Police, Muzaffarpur, seeking protection and alleging that the petitioner did not want to keep her at *Katni*, Madhya Pradesh and his family members did not want to keep her at Muzaffarpur, and they used to demand Rs.8,00,000/- as a condition to keep her in the matrimonial house.

13. It has also been stated in the counter affidavit that the opposite party no.2 had lodged two missing reports concerning the petitioner, which were submitted to the Senior Superintendent of Police, Muzaffarpur, on 26.02.2018, and the Senior Superintendent of Police, Patna, on 05.03.2018 respectively. It has also been stated that the brother of the petitioner had threatened the opposite party no.2 to withdraw the present F.I.R. and in this regard, she had also filed a *Sanha* before the concerned Police Station and thereafter, she filed Informatory Petition No. 2536 of 2018 before the Chief Judicial Magistrate, Patna, alleging that the petitioner and his family members were threatening her and her family to withdraw the



present F.I.R.

14. It has further been stated that on 28.08.2018, the opposite party no.2 had also lodged an F.I.R. vide Muzaffarpur P.S. Case No.640 of 2018 alleging that, while she was returning from the Court, her brother in law Rajesh Kumar and other persons stopped her car, assaulted her, snatched her *mangal sutra*, and attempted to abduct her son. The opposite party no.2 had also filed an application before the Town Superintendent, Katni, Madhya Pradesh on 04.06.2022, wherein she had asserted her status as the legally wedded wife of the petitioner and sought permission to reside along with her son, in the official residence allotted to the petitioner as the petitioner was not allowing them to stay there and was living with another woman.

15. Refuting the submissions made by the petitioner regarding lodging of F.I.R. against one Manish Kumar Pandey, it has been stated in paragraph nos. 18 to 22 as under:-

“18. That the petitioner filed one supplementary affidavit in the case and stated that the O. P.No. 2 solemnized her marriage with Manish Kumar is a misleading fact. The O. P. No. 2 never got married with Manish Kumar Pandey. Manish Kumar Pandey Committed rape with her on the pretext of managing a job



in Government hospital for which she submitted an application before Superintendent of Police, Aurangabad on dated 08.03.2022. On the basis of the above application, the superintendent of police forwarded the matter to District Judge, Aurangabad, who after proper inquiry refer the matter before Hon'ble Court and the Hon'ble Court after due consideration directed the District Judge, Aurangabad to inform S.P. Aurangabad to take action as per law laid down by Hon'ble Supreme Court in U.P. Judicial Officer's Association vs. Union of India and Others.

- 19. That after due sanction from District Judge, Aurangabad a case was registered as Aurangabad P.S. case no. 775 of 2022 Under Section 341, 323, 376, 493, 496, 379, 504, 506/34 of Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.*
- 20. That after proper investigation the investigating officer submitted Charge Sheet before chief judicial Magistrate, Aurangabad against Manish Kumar Pandey on 19.01.2024. After satisfaction, the learned Chief Judicial Magistrate, Aurangabad took Cognizance of Offence U/S. 341, 323, 493, 495, 496, 498-A, 376, 504, 506/34 I.P.C against Manish Kumar Pandey.*



21. That the Anticipatory Bail of Manish Kumar was rejected by the District Court and Hon'ble High Court, he was granted bail by Hon'ble Supreme Court.

22. That the O.P No.2 also filed F.I.R against the brother of Manish kumar Pandey (Vikash Pandey), who used to send vulgar massages, abused her and also used to threaten her, which was registered as Aurangabad P.S. Case No. 235 of 2022 for offences U/S. 307, 504, 506 of the Indian Penal Code and Section 67(A) of I.T Act was registered. Anticipatory Bail application of Vikash Pandey has been rejected by the District Judge as well from Hon'ble High Court.”

16. Lastly, it has been argued on behalf of the opposite party no.2 that once the Police, after completing investigation, has filed charge-sheet and once the learned Magistrate after considering the materials on record has proceeded to take cognizance, this Court may not interfere with the impugned order taking cognizance and his family members against the petitioner.

17. I have considered the submissions of the parties and perused the F.I.R. including the order taking cognizance.

18. From the reading of the F.I.R., it appears that



the petitioner and the informant-opposite party no.2, got married on 10.07.2016 and soon thereafter, marital discord between the parties crept up, leading to filing of several representations/petitions before different authorities. It also appears from the F.I.R. that the informant was pursuing her B.D.S. course while leaving in Patna and the petitioner was working in Ordnance Factory at Katni, Madhya Pradesh. The crux of the allegation is that the accused persons had demand dowry of Rs.8,00,000/- from the informant in order to allow her to reside at the matrimonial house and that the petitioner was engaged in an extra marital affair with another lady. From reading of the present F.I.R., it appears that no specific allegation has been levelled against the petitioner and merely the name of the petitioner and his family members have been incorporated in the F.I.R. The Hon'ble Supreme Court in the case of ***Dara Lakshmi Narayana (supra)*** has held that a mere reference to the names of the family members in a criminal case arising out of matrimonial dispute without any specific allegation indicating there active involvement should be nipped in the bud.

19. Pertinently, the present petitioner, who was posted at Ordnance Factory, Katni, Madhya Pradesh had filed a Divorce Petition *vide* Matrimonial Case No.63 of 2018 which



was filed on 27.02.2018. It is noted that the present F.I.R. came to be registered on 17.03.2018 just after approximately three weeks of filing of the Divorce Petition by the petitioner. The fact that the present F.I.R. came to be lodged only after the petitioner had filed a Divorce Petition together with the fact that there is an absence of any specific allegation of torture being meted out to the informant at the hands of the petitioner, lends credence to the submission that the present F.I.R. has been instituted by way of a counter blast to the Divorce Petition filed by the petitioner.

20. Further, from reading of the F.I.R., it also appears that the informant has made allegation against the petitioner of having an illicit relationship with another woman and therefore, the petitioner was not willing to keep the informant with him at the place of his posting. However, in the supplementary affidavit filed on behalf of the petitioner, it has been brought on record that the informant had an illicit relationship with one Manish Kumar Pandey, serving as Judicial Magistrate and subsequently, she lodged an F.I.R. vide Aurangabad Nagar P.S. Case No.775 of 2022 against the said person, making allegation that the aforesaid person had pretended to marry the informant on the allurements of securing



a Government job and on that pretext, he had established sexual relationship with her. The informant in her counter affidavit has made a statement that she never got married to the aforesaid Manish Kumar Pandey and that he had committed rape with her. However, the existence of this F.I.R. has not been denied by the informant. Moreover, in the F.I.R. vide Aurangabad Nagar P.S. Case No.775 of 2022, it has been alleged by the informant that she was staying with said Manish Kumar Pandey at his Government quarter at Jamui where he was posted.

21. At this juncture, it would be apposite to refer to the decision rendered by the Hon'ble Supreme Court in the case of ***State of Haryana & Ors vs Ch. Bhajan Lal & Ors.*** reported in ***AIR 1992 604***, wherein it has held as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter 14 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 channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such a power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at the 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 F.I.R. 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 concerned Act (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 concerned Act, 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.”

22. The Hon’ble Supreme Court in the case of ***Punjab National Bank vs. Surendra Prasad Sinha*** reported in ***AIR 1992 SC 1815*** has held that judicial process should not be an instrument of oppression or needless harassment. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it could not be the means to wreak personal vengeance.

23. It is a settled proposition of law that the inherent powers of this Court under section 482 of the Cr.P.C. (section 528 of the B.N.S.S.) are to be utilized sparingly and cautiously. It is equally settled that the power must also be exercised to do real and substantial justice.

24. Now, turning to the facts of the present case, it appears that the present F.I.R. has been filed as a counter blast to the Divorce Petition preferred by the petitioner-husband, which is still pending in the Principal Judge, Family Court, Patna. Moreover, there no specific allegation of torture meted out to the informant at the hands of the petitioner. The criminal prosecution arising out of matrimonial discord cannot be permitted to continue where it is manifestly a product of



bitterness, private vengeance or a counter blast to the matrimonial proceedings, particularly when the allegations are vague, omnibus and meant to rope in the entire family.

25. Further, a Co-ordinate Bench of this Court vide order dated 28.08.2023 passed in Criminal Miscellaneous No.74859 of 2018 titled as '*Anjana Rani @ Rubi Devi & Ors. vs. State of Bihar & Anr.*' had quashed the impugned order *qua* the other family members of the petitioner.

26. This Court has also noted that the impugned order taking cognizance is cryptic and non-speaking in nature since no cogent material has been discussed, based on which, the learned Magistrate has taken cognizance.

27. The Hon'ble Supreme Court in the case of *Pepsi Food Ltd. & Anr. vs. Special Judicial Magistrate & Ors.* reported in (1998) 5 SCC 749 has held as under:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the



nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge on to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

28. The Hon’ble Supreme Court in the case of ***Delhi Race Club (1940) Ltd. & Ors. vs. State of U.P. & Anr.*** reported in (2024) 10 SCC 690 has held as under:-

“30. The aforesaid aspect could be said to have been completely lost sight of by the High Court, while rejecting the application filed by the appellant herein under Section 482CrPC, seeking quashing of the summoning order.

31. In *Mehmood Ul Rehman v. Khazir Mohammad Tunda* [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420, this Court held thus:



(SCC p. 430, para 22)

“22. ... The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. ... In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of



mind on the satisfaction. ... To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.”
(emphasis supplied)

32. *The principle of law discernible from the aforesaid decision is that issuance of summons is a serious matter and, therefore, should not be done mechanically and it should be done only upon satisfaction on the ground for proceeding further in the matter against a person concerned based on the materials collected during the inquiry.”*

29. Considering aforesaid discussions and also the law laid down by the Hon’ble Supreme Court in the afore-quoted decisions, this Court is of the view that the present F.I.R. has maliciously been instituted against the petitioner, who is the husband of the informant, with an ulterior motive for wreaking vengeance and with a view to spite him due to private and personal grudge. Therefore, the petitioner cannot be subjected to the rigors of criminal trial at the hands of the informant based on personal grudge arising out of marital discord since that would be an abuse of the process of the Court.



30. Accordingly, this application is allowed. Consequently, the impugned order taking cognizance dated 16.07.2018 passed by the learned Additional Chief Judicial Magistrate, Patna and all consequential proceedings arising therefrom is hereby quashed *qua* the petitioner.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
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