

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9931 of 2023

Arising out of PS. Case No.-292 Year-2021 Thana- Kadamkuan District- Patna

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KUNDAN KUMAR Son of Birendra Kumar Singh R/o A/18, R.B.I Staff
Quarter, Road No. 10A Rajendra Nagar, P.S- Kadamkuan Dist- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mabina Singh Wife of Kundan Kumar 10A, R.B.I. Staff Quarter, Rajendra
Nagar, P.S- Kadamkuan, Distt- Patna permanent address R/V and PO Madra
Road, Nawada, Dist- Nawada, Correct Address- d/o late Vinod Singh, R/o
124 A , Ravindra Sarni, P.S- Jodda Sakho, Distt- Kolkata, West bengal

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Senior Advocate Mr. Amresh Kumar Sinha, Advocate
For the State	:	Mr. Pramod Kumar Pandey, APP.

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CORAM: HONOURABLE MR. JUSTICE ANSUL
ORAL JUDGMENT

Date : 22-06-2026

This petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeks the quashing of the cognizance order dated 29.04.2022 passed by the learned Additional Chief Judicial Magistrate-X, Patna, taking cognizance of offences under Sections 498-A, 313, and 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961, in connection with Kadamkuan PS Case No. 292 of 2021. The informant Mabina Singh says she married the petitioner Kundan Kumar on 19.07.2019 at a temple in Nawada as per Hindu rites and rituals, shifted thereafter to the RBI Staff Quarter at Rajendra Nagar, Patna, and was subjected to cruelty and dowry harassment, the forced termination of her pregnancies, physical assault on 03.04.2021, and eventual expulsion from the



matrimonial home. The petitioner denies the marriage entirely. He says the informant, during the whole of this period, was a married woman living in Kolkata as the wife of one Sanjeet Singh.

2. On 19.11.2020, Mabina Singh walked into Lake Town Police Station, Kolkata, and lodged a complaint that was registered as FIR No. 204 of 2020 under Sections 406 and 506 of the Indian Penal Code. This is Annexure 2. In that complaint, in the column for the name of her husband, she entered the name Sanjeet Singh. The grievance was that Sanjeet Singh, having obtained a duplicate key to her almirah and locker, had removed therefrom official cash of Rs. 2,30,000, personal cash of Rs. 40,000, gold jewellery, silver coins, a diamond mangalsutra, and other valuables, and had then absconded; that he was threatening her; that she feared for her life; that she was contemplating suicide on account of his conduct. This complaint was lodged more than a year after the date on which the informant now says she had already married the petitioner and left for Patna to reside with him. The name of the petitioner does not appear in the complaint. There is no suggestion in it that she had a husband other than Sanjeet Singh.

3. Before examining the legal consequence, it is necessary to understand the full shape of the informant's matrimonial history, because it is that history which makes the present prosecution untenable from its very foundation. Mabina Singh and Sanjeet Singh married on 06.05.2011 as per Hindu rites and rituals. Their marriage broke down, and after a period of separation they decided to dissolve it by mutual consent. They filed a joint petition before the Principal Judge, Family Court, Calcutta, registered as Matrimonial Suit No. 106 of 2019. The petition was filed on 11.07.2019,



which was the very month and year in which the informant claims she had contracted a fresh marriage with the petitioner at Nawada. The divorce decree in that suit was not passed until 23.02.2021. On that date, the order sheet of the Family Court records that Mabina Singh was personally present, was examined as PW-1, and gave her evidence on affidavit. She received the certified copy of the order on 09.03.2021. This decree is Annexure 3. Annexure 4 is a leave and licence agreement dated 19.10.2019, executed in respect of commercial premises in Kolkata in connection with a business in which the informant had an interest; in that document, executed three months after the alleged marriage at Nawada, the informant described herself by her father's name and made no reference to the petitioner in any capacity.

4. The picture that these three documents draw, placed against the FIR in the present case, is one of complete internal contradiction. On 11.07.2019, when the informant was supposedly newly married to the petitioner and beginning her life at his home in Patna, she was simultaneously standing before the Family Court at Calcutta and filing a joint divorce petition from Sanjeet Singh, a man she continued to describe as her husband. From that date until 23.02.2021, no court of competent jurisdiction had dissolved that marriage. In November 2020, when by her own account she had been the petitioner's wife for more than a year, she described Sanjeet Singh as her husband to the Kolkata police and made no mention of the petitioner's existence. Three months after the alleged marriage at Nawada, in a commercial document signed in Kolkata, she described herself by her father's name and left the petitioner's name out



entirely. The silence across all three documents is not an omission or an oversight. It is a pattern.

5. A marriage solemnized during the subsistence of a prior undissolved marriage is void under Section 11 read with Section 5(i) of the Hindu Marriage Act, 1955. On 19.07.2019, the marriage between Mabina Singh and Sanjeet Singh was alive. There was no divorce on that date, nor for nearly twenty months thereafter. The claimed marriage with the petitioner was therefore void ab initio. The Supreme Court examined the interplay between the validity of a marriage and the application of Section 498-A IPC in *Reema Aggarwal v. Anupam*, (2004) 3 SCC 199, and held:

"The concept of 'dowry' is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498A and 304B IPC and Section 113B of the Indian Evidence Act were introduced cannot be lost sight of. Legislations enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper technically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and



later on, becomes a victim of the greed for money."

The Court extended this reasoning to hold that even where the marriage is invalid, the expression 'husband' in Section 498-A ought to be construed to cover a person who enters into a marital arrangement under a proclaimed or feigned status of husband and then subjects the woman to cruelty:

"It would be appropriate to construe the expression 'husband' to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions. Such an interpretation, known and recognized as purposive construction has to come into play in a case of this nature."

6. The ratio of Reema Aggarwal was fashioned for a different fact situation, and it cannot be pressed into service here. In that case, the woman was deceived; a man who already had a living wife led her into a marital relationship without her knowledge of the impediment, and the Court extended the protection of Section 498-A to her because the legislative purpose of the provision was to protect women who enter matrimonial relationships and then become victims of cruelty or dowry demands. The present case does not answer that description. It is the informant who, on 19.07.2019, had a living husband namely Sanjeet Singh. She was a party to the undissolved marriage. She continued to hold herself out as wife of Sanjeet Singh in Kolkata as late as November 2020, even though she alleges that she was by then residing in Patna as the wife



of petitioner, and she personally appeared before the Family Court at Calcutta in February 2021 to complete the dissolution of a marriage whose existence she never disclosed to the Kadamkuan police station or to this court through the FIR. The purposive construction approved in *Reema Aggarwal* was designed to protect a woman from a man's fraud; it was not designed as a mechanism by which a person who herself had a living and undissolved spouse on the date of the alleged second marriage could invoke the penal law against the second man on the footing of a marriage that the law regards as void.

7. In ***State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335**, the Supreme Court enumerated the categories of cases in which the power under Section 482 of the Code of Criminal Procedure (now Section 528 of the BNSS) may be exercised to prevent abuse of process or to secure the ends of justice. Category (1) covers cases:

"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."

Even on the informant's own version of events, accepted in its entirety, Section 498-A is not made out, because the condition precedent to the offence, namely a valid marriage conferring the status of wife in the eyes of law, is absent. The Court in *Bhajan Lal* also recognized, under category (7), cases 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."

The informant lodged the FIR on 21.06.2021, nearly four months after she had personally appeared before the Family Court at Calcutta and obtained her divorce from Sanjeet Singh, and without disclosing to the Kadamkuan police, or anywhere in the FIR, the fact that she had been pursuing Sanjeet Singh as her husband before the Kolkata police as recently as November 2020. A complaint of this nature, resting upon a marriage that was void from its inception under the informant's own matrimonial history, was brought against petitioner standing at this remove of time, and without any explanation for the contradictions that her own documents create, satisfies this court that the present proceeding falls within the category the Hon'ble Supreme Court identified.

8. The Supreme Court's observations in **Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667**, acquire particular force on the facts of this case. The Court said:

"It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motives."

What the Court said next is no less important:

"The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. 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."

The Court added:

"It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law."

The person against whom these observations are made to operate in the present case is a senior public servant against whom a complaint has been filed by a woman who, by her own documentary trail, was someone else's wife on the date she says she married him, and who continued to hold herself out as someone else's wife for the better part of two years thereafter.

9. There was no valid marriage. Where there is no valid marriage, there is no wife in the eyes of law. Where there is no wife in law, there is no husband in law within the meaning of Section 498-A IPC, and the offence cannot be constituted however many of its other ingredients are alleged. The petition is accordingly allowed. The cognizance order dated 29.04.2022, passed by the learned Additional Chief Judicial Magistrate-X, Patna, in connection with Kadamkuan PS



Case No. 292 of 2021, is hereby quashed, and all proceedings consequent upon and arising therefrom shall also stand quashed.

(Ansul, J)

Vikash/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	
Transmission Date	

