

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No. 52725 of 2015

Arising Out of PS. Case No.-310 Year-2013 Thana- VAISALI COMPLAINT CASE District-
Vaishali

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1. Rinku Kumari Wife of Sanjeev Mishra
2. Archana Sawarna @ Archana Kumari Wife of Sri Rajeev Mishra Both are resident of village Loma, P.S. - Rajapakar, Barathi, District - Vaishali.
3. Garib Nath Sharma son of Madan Mohan Sharma
4. Madan Mohan Sharma son of Bijli Thakur Both residents of Biroopur, P.O. Nenha, P.S. - Hajipur Sadar, District - Vaishali.

..... Petitioner/s

Versus

1. State Of Bihar
2. Archana Kumari wife of Prashant Kumar Mishra village Loma, P.S. - Rajapakar, Barathi, District – Vaishali.

..... Opposite Party/s

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India Penal Code – S.498 A

Dowry Prohibition Act – S.3/4

Quashing – order dated 30/4/2013 passed in Complaint Case 310/2013 where learned Sub-divisional Judicial Magistrate , Hajipur took cognizance for offences under S.498 and S.3/4 Dowry Prohibition Act – despite service of notice opposite party failed to join proceedings – marriage of the complainant was solemnized with the accused in which the parents of the complainant gave ornaments with other household items as gifts to the in-laws of the complainant – from the time of marriage the in laws of the complainant started demanding Alto car for which they started torturing complainant - petitioner no1 i& 2 are sister in laws of the complainant and the rest are cousins or brother in law of the complainant living separately and hence they have no connection with the daily affairs where allegation of cruelty is also appearing general against them – in view of actual factual background impugned order dated 30/4/2013 taking

cognizance with all its all the above named patitioners arising therefore as passed in connection with Complaint Case No.310/2013 pendind before lerned Sub-divisional Judicial Magistrate is hereby quashed and set aside –Application allowed – trial court to record to be returned if any along with copy of judgement.

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Versus

1. State Of Bihar

2. Archana Kumari wife of Prashant Kumar Mishra village Loma, P.S. - Rajapakar, Barathi, District - Vaishali.

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Appearance :

For the Petitioner/s : Mrs. Archana Sinha, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 23-04-2024

Heard learned counsel for the petitioners

and learned counsel for the respondents.

2. The present quashing petition has been preferred to quash the order dated 30.04.2013 passed in Complaint Case No. 310 of 2013 (Trial No. 2990 of 2013), where learned Sub-Divisional Judicial Magistrate, Hajipur took cognizance for the offence punishable under



Sections 498 A of the Indian Penal Code (in short IPC) and Section 3/4 of the Dowry Prohibition Act against the petitioners.

3. Despite proper service of notice, opposite party no. 2, failed to join the present proceedings.

4. From the crux of complaint petition it appears that marriage of complainant was solemnized with one Prashant Kumar Mishra on 20.05.2009 in which the parents of complainant gave ornaments with other house hold gifts to the in-laws of the complainant. But from the time of the marriage the in-laws of the complainant started demanding Alto car and for which they started torturing the complainant.

5. Learned counsel appearing for the petitioners submitted that from the perusal of complaint, no *prima facie* case is made out against petitioners for the reasons that petitioner no. 1 & 2 are sister-in-law of the complainant and petitioner no. 3 & 4 are cousin brother-in-law. It is submitted that petitioners are living



separately and having no connection with their daily and domestic affairs. It is submitted that their implication appears only out of being close relative with ulterior and oblique motive, suggesting harassing attitude. It is a classical case of malicious prosecution and misuse of provisions of Section 498-A of Indian Penal Code. While concluding the argument, it is submitted that even from the perusal of complaint petition, the allegation *qua* petitioners is appearing very much general and omnibus.

6. In support of his submissions, learned counsel relied upon the legal reports of the Hon'ble Supreme Court as reported in the matter of **Abhishek Vs. State of Madhya Pradesh** reported in **2023 SCC OnLine SC 1083**.

7. Learned APP appearing for the State while opposing the application submitted that petitioners being in-laws played active role towards alleged mental and physical cruelty to O.P. No. 2, by raising demand of dowry.



8. It would be apposite to reproduce relevant Paragraph Nos. 12, 13, 14 ,5, 16 & 17 of **Abhishek Case (supra)**, which read as:-

12. The contours of the power to quash criminal proceedings under Section 482 Cr.P.C. are well defined. In V. Ravi Kumar v. State represented by Inspector of Police, District Crime Branch, Salem, Tamil Nadu [(2019) 14 SCC 568], this Court affirmed that where an accused seeks quashing of the FIR, invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint. In Neeharika Infrastructure (P). Ltd. v. State of Maharashtra [Criminal Appeal No. 330 of 2021, decided on 13.04.2021], a 3-Judge Bench of this Court elaborately considered the scope and extent of the power under Section 482 Cr.P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare cases, such standard not being confused with the norm formulated in the context of the death penalty. It was further observed that while examining the FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made



therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, and more particularly, the parameters laid down by this Court in *R.P. Kapur v. State of Punjab* (AIR 1960 SC 866) and *State of Haryana v. Bhajan Lal* [(1992) Supp (1) SCC 335], the Court would have jurisdiction to quash the FIR/complaint.

13. Instances of a husband's family members filing a petition to quash criminal proceedings launched against them by his wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty abound on this score. We may now take note of some decisions of particular relevance. Recently, in *Kahkashan Kausar alias Sonam v. State of Bihar* [(2022) 6 SCC 599], this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC. Noting that the foremost issue that required determination was whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial disputes. This Court observed that false implications by way of general omnibus allegations made in



the course of matrimonial disputes, if left unchecked, would result in misuse of the process of law. On the facts of that case, it was found that no specific allegations were made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict severe scars upon the accused and such an exercise ought to be discouraged.

14. In *Preeti Gupta v. State of Jharkhand* [(2010) 7 SCC 667], this Court noted that the tendency to implicate the husband and all his immediate relations is also not uncommon in complaints filed under Section 498A IPC. It was observed that 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, as allegations of harassment by husband's close relations, who were living in different cities and never visited or rarely visited the place where the complainant resided, would add an entirely different complexion and such allegations would have to be scrutinised with great care and circumspection.

15. Earlier, in *Neelu Chopra v. Bharti* [(2009) 10 SCC 184], this Court observed that the mere mention of statutory provisions and the



language thereof, for lodging a complaint, is not the 'be all and end all' of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that offence. These observations were made in the context of a matrimonial dispute involving Section 498A IPC.

16. Of more recent origin is the decision of this Court in Mahmood Ali v. State of U.P. (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023) on the legal principles applicable apropos Section 482 Cr.P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.P.C. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or



vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

17. In Bhajan Lal (supra), this Court had set out, by way of illustration, the broad categories of cases in which the inherent power under Section 482 Cr.P.C. could be exercised. Para 102 of the decision reads as follows:

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



(1) 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.

(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR 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 persons 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.”

9. In view of aforesaid legal and factual submissions as petitioners appear sister-in-law and cousin brother-in-law living separately, having no connection with daily and domestic affairs of O.P. No.2, where allegation of cruelty is also appearing very much general and omnibus against them.

10. In view of aforesaid factual background and by taking guiding note of **Abhishek case (supra)**, impugned order of taking cognizance dated 30.04.2013 with all its consequential proceedings, *qua*, all above



named petitioners arising thereof as passed in connection with Complaint Case No. 310 of 2013 (Trial No. 2990 of 2013) pending before learned Sub-Divisional Judicial Magistrate, Hajipur is hereby quashed and set aside.

11. Hence, this application stands allowed.

12. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	24.04.2024
Transmission Date	24.04.2024

