

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.39115 of 2016

Arising Out of PS. Case No.-35 Year-2015 Thana- MOKAMAH District- Patna

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1. Neha Kumari, wife of Amit Kumar
2. Amit Kumar, son of Shri Dharmendra Pd. Singh,
Both residents of Village- Maranchi, Police Station- Maranchi, District- Patna.

... .. Petitioners

Versus

1. The State of Bihar
2. Gauri Kumari, daughter of Vedanand Choudhary, Resident of Village and P.S- Parta, District Khagaria.

... .. Opposite Parties

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Acts/Sections/Rules:

- Sections 498-A, 323 and 504/34 of the Indian Penal Code
- Section 3/4 of the Dowry Prohibition Act

Cases referred:

- *Abhishek vs. State of Madhya Pradesh reported in 2023 SCC Online SC 1083*

Application - for quashing of order passed by JM whereunder cognizance has been taken against the petitioners for the offences under Sections 498-A, 323 and 504/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

Held - Petitioners are the married sister-in-law the husband of sister-in-law who are living separately much prior to this occurrence - It further appears that nature of allegation/accusation is very much general and omnibus against the petitioners, hence, by taking note of the guidelines laid down by the apex court - order of cognisance is hence quashed. (Para 10)

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Appearance :

For the Petitioner/s

:

Mr.Vijay Kumar, Advocate
Mr.Murari Narain Choudhary, Advocate
Mr.Bramanand Kumar, Advocate
Mr.Aniket Kumar, Advocate

For the Opposite Party/s :

Dr. Ajeet Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 18-04-2024

Heard Learned counsel for the petitioners and learned
A.P.P. for the State.

2. This application has been filed to quash the order dated 11.02.2016 passed by learned Judicial Magistrate - 1st Class, Barh (Patna) in connection with Mokama P.S. Case No. 35 of 2015/G.R. No. 374 of 2015, whereby and whereunder cognizance has been taken against the petitioners for the offences under Sections 498-A, 323 and 504/34 of the Indian Penal Code and Section 3/4 of the



Dowry Prohibition Act.

3. The brief facts of the case is that the informant has alleged that she was a resident of Parbatta in the District of Khagariya and her marriage was solemnized on 6th July 2014 with one Sumit Sakarityayan and after four days she returned back to her *maika* with her father. She further alleged that her father, at the time of Durga Puja, requested her in-laws for her '*Duragman*' but they were adamant to take Rs.5 lacs in cash for her '*Bidai*'. The father of informant although, requested that now he is not in a position to pay any further demand, as he had already paid as per his capacity, but her in-laws flatly refused his request. She further alleged that lastly on the date of occurrence i.e. 4th March, 2015, when she alongwith her father reached at her husband's home, all her in-laws members came out from the house and started abusing them by using filthy language, and on protest, she was assaulted by fists and slaps. It is alleged that the occurrence was witnessed by several persons.

4. In aforesaid factual background of allegations,



Mokama P.S. Case No. 35 of 2015, G.R. No. 374/2015 was lodged against the accused persons-petitioners for the offences under Section 498-A, 323, 504/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act, where after completion of investigation, charge-sheet was submitted for the offences under Sections as mentioned above and accordingly, cognizance was also taken for aforesaid sections by the learned jurisdictional Magistrate which is the impugned order for purpose of present petition.

5. It is submitted by learned counsel for the petitioners that petitioner no. 1 is married sister-in-law and petitioner no. 2 is husband of petitioner no. 1, who are living separately much prior to this occurrence as marriage of petitioner no. 1 was solemnized much before the marriage of opposite party no. 2 with her brother namely, Sumit Sakarityayan. It is further submitted that the allegations, as available through narration of F.I.R. against the petitioners are very much general and omnibus in nature and *prima-facie* it appears that their implication made only out of relation with harassing attitude, where motive appears



ulterior and oblique.

6. In view of the aforesaid factual submission, learned counsel for the petitioners submitted that the present proceeding against petitioners is fit to be quashed and set-aside. In support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court in the case of **Abhishek vs. State of Madhya Pradesh** reported in **2023 SCC Online SC 1083**.

7. It appears from the office report dated 03.04.2024 that notice served upon opposite party no. 2 personally, but she failed to join the present proceeding.

8. Learned A.P.P. for the State, while opposing the application submitted that allegation as to commit cruelty and demand of dowry are available against the petitioners as per narration of F.I.R.

9. It would be apposite to reproduce para-13, 14, 15, 16 & 17 of the legal report of Hon'ble Supreme Court in the case of **Abhishek** (supra), which are as under:-

"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 State of **Haryana and Ors. Vs. Bhajan Lal and Ors [(1992) Supp (1) SCC 335]**, 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 information 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 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 Act concerned (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 Act concerned, 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."

10. In view of the aforesaid factual and legal submissions and by taking note of the fact that the petitioner no. 1 is the married sister-in-law and petitioner no. 2 is the husband of petitioner no. 1, who are living separately much prior to this occurrence as marriage of petitioner no. 1 was solemnised with petitioner no. 2 much before the marriage of opposite party no. 2. It further appears that nature of allegation/accusation is very much general and omnibus



against the petitioners, hence, by taking note of the guidelines as discussed in the case of **Abhishek** (supra), the impugned order dated 11.02.2016 passed by learned Judicial Magistrate - 1st Class, Barh (Patna) in Mokama P.S. Case No. 35 of 2015/G.R. No. 374 of 2015 *qua* petitioners is hereby quashed and set-aside.

11. The application stands allowed.

12. Let a copy of this judgment be sent to learned trial court immediately.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.04.2024
Transmission Date	19.04.2024

