IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49132 of 2025

Arising Out of PS. Case No.-47 Year-2020 Thana- COMPLAINT CASE - DANAPUR District- Patna

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Saroj Kumari Wife of Sri Vijay Narayan Resident of Village -Defence Colony Shahpur Police Station- Shahpur, Dist- patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. Anuradha Kumari Singh Wife of Sri Ashutosh Prakash and D/O Vinay Kumar Village and Post- Gorakhari, Ps- Bikram Dist- patna at Present Residing at Jhaurdih, Malipatti, P.S. - Jhaurdih, Dhanbad Jharkhand

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Ram Naresh Sharma, Advocate.
For O.P. No.2	:	Mr. Aditya Kumar Pandey, Advocate. Mr. Priyam Kumari, Advocate.
For the State	:	Mr.Md. Matloob Rab, APP.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 24-11-2025

Heard learned counsel appearing on behalf of the petitioner; learned APP for the State and learned counsel appearing on behalf of the opposite party no.2.

2. The petitioner has preferred the application under Section 528 of the BNSS for quashing of the order taking cognizance dated 22.01.2020 passed in Complaint Case No. 47 of 2020 by learned 1st Judicial Magistrate, Court No.7, Danapur, Patna whereby the learned Magistrate has taken cognizance against the petitioner under Section 498A, 323 and 504 of the Indian Penal Code.

3. The prosecution story, in brief, is that the

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complainant, Anuradha Kumari Singh, was married to the accused, Ashutosh Prakash, in May 2013 at Dhanbad (Jharudih) according to Hindu rites, and at the time of marriage, her father gifted Rs. 15 lakhs in cash, gold jewellery worth Rs. 2,50,000/-, various domestic articles including silver items and a gold chain, and an Indica car valued at Rs. 6 lakhs, which were handed over to the father of the accused; that after the marriage the complainant began residing with her husband at Defence Colony, Shahpur, Patna, and thereafter travelled with him to various places pursuant to his Central Government posting, during which period she, being an unskilled lady without independent income, was subjected to continuous physical and mental torture by her husband, father-in-law, mother-in-law and nanads from the end of 2013; that her first pregnancy at Chennai was terminated allegedly at the instance of her husband and mother-in-law, and though she later conceived again and delivered a male child at Dhanbad in 2017, she continued to be assaulted repeatedly, including demands of Rs. 5 lakhs and later Rs. 6 lakhs as dowry, accompanied by abusive taunts; that the accused persons would routinely consume liquor together which she objected to, and her father-in-law, a retired Army officer, allegedly threatened to kill her with his pistol; that on several occasions, including in 2015 and again on 03.01.2019 at Porbandar, Gujarat, she was brutally assaulted, prompting her to

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lodge a complaint before the Naval Police; and that although the matter was also reported to the local police, no case was registered.

4. Learned counsel appearing on behalf of the petitioner submitted that the learned District Court, without considering the material available on record and applying its judicial mind has proceeded to take cognizance against the petitioner who is the mother-in-law of the O.P. No.2 in most mechanical manner, which cannot sustain in the eye of law. Learned counsel further submitted that the son of the petitioner, namely, Ashutosh Prakash has already filed a restitution petition under Section 9 of the Hindu Marriage Act for giving direction to the complainant to live with him in the Family Court, Patna but the complainant is neither living with her husband Ashutosh Prakash (son of the petitioner) nor she is participating in the mediation proceeding which is going on in the restitution case filed by her husband (son of the petitioner) and the next date for mediation is fixed on 29.11.2025.

5. *Per contra*, learned counsel appearing on behalf of the opposite party no.2 submitted that it has become difficult for the opposite party no.2 to live with the petitioner and her son because the petitioner along with her son has not only intentionally subjected her to cruelty, but at the same time, they are not taking proper care of the only child who is aged about 8

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years. Learned counsel is also of the view that amicable settlement is the best recourse and for that opportunity may be given to the parties, as the offence is not against the society and the court need not encourage such dispute.

6. Learned APP for the State submitted that opportunity may be given to the parties to reconcile their dispute amicably, so that peace can be brought in the family.

7. Heard the parties.

8. Having considered the rival submissions made on behalf of the parties and as informed by the learned counsel appearing on behalf of the O.P. No.2 that O.P. No.2 is living along with her parents and the only child is also not being taken care of by her husband. In peculiar facts of the case and the background circumstances that the parties have only one child who is aged about 8 years old, his welfare is required to be taken for proper growth. The Apex Court dealing with such situation on the touchstone of principle of *parens patriae* in the case of ***Howarth v. Northcott, 152 Conn 460*** has observed that the welfare of the child is of paramount consideration. I find it apt to reproduce the observations made by the Apex Court in the aforesaid case, which is as under:

> *"In habeas corpus proceedings to determine child custody, the jurisdiction exercise by the Court rests in such cases on its inherent equitable powers and exerts theforce of the State, as parens patrie, for the protection of its infant ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the*

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exercise of the jurisdiction of a court of equity." (emphasis supplied)

It was further observed;

"The employment of the forms of habeas corpus in a child custody case is not for the purpose of testing the legality of a confinement or restraint as contemplated by the ancient common law writ, or by statute, but the primary purpose is to furnish a means by which the court, in the exercise of its judicial discretion, may determine what is best for the welfare of the child, and the decision is reached by a consideration of the equities involved in the welfare of the child, against which the legal rights of no one, including the parents, are allowed to militate. It was also indicated that ordinarily, the basis for issuance of a writ of habeas corpus is an illegal detention; but in the case of such a writ sued out for the detention of a child, the law is concerned not so much with the illegality of the detention as with the welfare of the child."

9. In this regard, it would be also gainful to reproduce the observation made by the Apex Court in ***Mausami Moita Ganguli V. Jayant Ganguli*** reported in ***(2008)7 SCC 673*** in paragraph nos. 19 to 21 and 23 to 26:

"19. The principle of law in relation to the custody of a minor child are well settled. It is trite that while determining the question as to which parent the care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. Indubitably, the provisions of the law pertaining to the custody of a child contained in either the Guardians and Wards Act, 1890(Section 17) or the Hindu Minority and Guardianship Act, 1956 (Section 13) also hold out the welfare of the child as a predominant consideration. In fact, no statute, on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor."

"20. The question of welfare of the minor child has again to be considered in the background of the relevant facts and circumstances. Each case has to be decided on its own facts and other decided cases can hardly serve as binding precedents in so far as the factual aspects of the case are concerned. It is, no doubt, true that father is presumed by the statues to be better suited to look after the welfare of the child, being normally the working member and head of the family, yet in each case the court has to see primarily to the welfare of the child in determining the question of his or her custody. Better financial resources of either of the parents or their love for the child may be one

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relevant considerations but cannot be the sole determining factor for the custody of the child. It is here that a heavy duty is cast on the court to exercise its judicial discretion judiciously in the background of all the relevant facts and circumstance, bearing in mind the welfare of the child as the paramount consideration."

21. In Rosy Jacob v. Jacob A. Chakramakkal reported in (1973) 1 SCC 840, a three-Judge Bench of the Apex Court in a rather curt language had observed that the controlling factor governing the custody of the child would be its welfare and not the rights of the parent:

"15. ... The children are not mere chattels: nor are they mere playthings for their parents. Absolute right of the parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human being so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them."

"23. Having bestowed our anxious consideration to the material on record and the observation made by the courts below, we are of the view that in the present case there is no ground to upset the judgment and order of the High Court. There is nothing on record to suggest that the welfare of the child is in any way in peril in the hands of the father. In our opinion, the stability and security of the child is also essential ingredient for a full development of child's talent and personality. As noted above, the appellant is a teacher, now employed in a school at Panipat, where she had shifted from Chandigarh some time back. Earlier, she was teaching in some school at Calcutta.

Admittedly, she is living alone. Except for a very short duration when he was with the appellant, Master Satyajeet has been living and studying in Allahabad in a good school and is stated to have his small group of friends there. At Panipat, it would be an entirely new environment for him as compared to Allahabad."

"25. It is also significant to note that during the course of hearing on one of the dates, when we had not yet interviewed Satyajeet, we had suggested that it would be better if the child could stay with his mother for some more time. However, upon hearing us, he started crying and whining and, showed reluctance to go with the mother."

Watching his reaction, we dropped the proposal.

"26. Under these circumstances and bearing in mind the paramount consideration of the welfare of the child, we are convinced that the child's interest and welfare will be best served if he continues to be in the custody of the father, In our opinion, for the present, it is not desirable to disturb the custody of master Satyajeet and, therefore, the order of the High Court giving his exclusive custody to the

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> *father with visitation rights to the mother deserves to be maintained. We feel that the visitation rights to the appellant by the High Court, as noted above, also do not require any modification."*
>
> *We, therefore, affirm the order and the afore-extracted direction given by the High Court. It will, however, be open to the parties to move this Court for modification of this order or for seeking any direction regarding the custody and well- being of the child, if there is any change in the circumstances."*

10. In the case of ***Gaurav Nagpal v. Sumedha Nagpal*** reported in ***(2009) 1 SCC 42***, the Apex Court in paragraph 50 has held as follows:-

> *"50. When the Court is confronted with conflicting demands made by the parents, each time it has to justify the demands. The Court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The Court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor."*

11. Recently also, the Apex Court in the case of ***Mange Ram Vs. State of Madhya Pradesh & Another (Special Leave Petition (Criminal) No.10817 of 2024)***, in paragraph nos. 25 and 31 has reiterated that in cases, particularly, related to dowry, opportunity be given to the parties first to reconcile, which *inter alia* are as follows:-

> *"25. This Court, in Dara Lakshmi Narayana vs. State of Telangana, (2025) 3 SCC 735, 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*

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> *prosecuted are residing separately or have had no connection with the matrimonial home, allowing the prosecution to proceed would amount to an abuse of the process of law. The Court noted that criminal law is not to be deployed as an instrument of harassment, and that judicial scrutiny must be exercised to guard against such misuse.*
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> *31. We also refer to Gian Singh vs. State of Punjab, (2012) 10 SCC 303 wherein this Court observed that where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled, although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored, securing the ends of justice being the ultimate guiding factor. In this regard, a specific reference was made to offences arising out of matrimony, particularly relating to dowry, etc. or a family dispute, where the wrong is basically to the victim but the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable. The High Court may, within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.*

12. Based on the above principle of law, for the welfare of the child, I direct the petitioner who is a government teacher and her son who is working in Indian Navy and both are earning substantial amount, to make payment of Rs.25000/- per month positively by second week of every month for the care and nutrition of his only child. At the same time, they must ensure regular payment of tuition fee and the other educational expenses of the child.

13. Considering the fact that mediation proceeding is

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going on between the parties in the restitution case filed by the son of the petitioner, I direct the petitioner along with her son and O.P. No.2 to appear before the learned District Court in the mediation proceeding which is fixed on 29.11.2025 to settle their dispute outside the Court instead of fighting it out. Till they arrive at a settlement, no coercive action shall be taken against the petitioner.

14. In case, the parties resolve their dispute amicably, then the proceeding is required to be dropped in light of the law laid down by the Apex Court in the case of ***B.S. Joshi v. State of Haryana,*** reported in, ***(2003) 4 SCC 675*** **and** ***Mange Ram Vs. State of Madhya Pradesh & Another (Special Leave Petition (Criminal) No.10817 of 2024).***

15. In case of failure on the part of the petitioner to settle their dispute, then in that case, the learned District Court shall proceed with the trial.

16. Accordingly, the present quashing application stands disposed of.

(Purnendu Singh, J)

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CAV DATE	NA
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