

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8276 of 2024**

Arising Out of PS. Case No.-805 Year-2014 Thana- SAHARSA COMPLAINT CASE
District- Saharsa

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1. Lakshmi Shankar Prasad @ Gopalji S/O Late Satya Narayan Prasad R/O Mohalla- Ram Govind Complex, Gola Bazar, Ward No.4, P.S- Samastipur, Distt.- Samastipur.
 2. Gauri Devi W/O Lakshmi Shankar Prasad @ Gopalji R/O Mohalla- Ram Govind Complex, Gola Bazar, Ward No.4, P.S- Samastipur, Distt.- Samastipur.

... .. Petitioners

Versus

1. The State of Bihar
2. Ranjana Bharti W/O Triyogi Narayan Prasad, D/O Arun Kumar Gupta R/O Mohalla- Ram Govind Complex, Gola Bazar, Ward No.4, Posts Office- Samastipur, P.S- Samastipur, Distt.- Samastipur At Present Residing At Krishna Nagar, Ward No. 22, Saharsa, P.S- Saharsa, Distt.- Saharsa.

... .. Opposite Party

Appearance :

For the Petitioners	:	Mr.Uday Chand Prasad, Advocate Ms.Pooja Prasad, Advocate
For the State	:	Mr.Braj Kishore Pd.(APP)
For the O.P. No. 2	:	Mr.Chandra Mohan Jha, Advocate

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 03-07-2025

Heard Mr. Uday Chand Prasad, learned counsel for the petitioners and Mr. Chandra Mohann Jha, learned counsel for the opposite party no. 2.

2. This application has been preferred under Section 482 of the Code of Criminal Procedure (in short, the 'Cr.P.C.')

as to quash the order dated 12.02.2016 passed by learned S.D.J.M., Saharsa in Complaint Case No. 805/2014, whereby



learned Magistrate has been pleased to take cognizance for the offences punishable under Section 498A of the IPC against the petitioner.

3. The brief case of the prosecution is that the complainant (opposite party no. 2) got marriage with Triyogi Narayan Prasad on 28.05.1996 and after marriage she was blessed with one son and one daughter. She alleged that her husband is simple, illiterate, where the elder brother of her husband was the head of the family and look after the entire properties of the family, which is in crores. The complainant further stated that she was living separately with her husband and getting Rs. 3000/- per month from the income of the property, where petitioner no. 1 has grabbed the entire amount of the income of the family and also taken signature of her husband on the blank paper. She further alleged that petitioner no. 1 is the bhaisur and petitioner no. 2 is the gotni, where one Raj Kumar Prasad is the friend of her husband and bhaisur.

4. On the basis of aforesaid complaint of the complainant, Complaint Case No. 805/2014 was registered



against the petitioners and other accused persons.

5. Mr. Uday Chand Prasad, learned counsel appearing for the petitioners submitted that petitioner no. 1 is the bhaisur (elder brother-in-law) and petitioner no. 2 is the gotni (wife of petitioner no. 1) of the complainant. It is submitted that the complaint was made to the Officer Incharge, Samastipur and other senior police officials, but no action was taken being property dispute between husband of O.P. No. 2 and petitioner no. 1, who are full brother.

6. Learned counsel further submitted that after perusal of the complaint, solemn affirmation on oath and examination of enquiry witnesses, learned court below has taken cognizance under Section 498A of the IPC in very mechanical manner.

7. Learned counsel also submitted that petitioner no. 1 and husband of the complainant are full brother and much earlier, the father of petitioner no. 1 had done partition of the landed properties between them as well as separated the business among both the sons. Both brother i.e. petitioner no. 1 and husband of the complainant were living with their family



separately.

8. Learned counsel also submitted that after 18 years of marriage, the complainant filed the aforesaid complaint case only to grab the properties of petitioners. She has not made her husband accused in the complaint and this fact can be gathered from the face of complaint itself.

9. In support of his aforesaid submission, learned counsel has relied upon the legal report of Hon'ble Supreme Court as available in the matter of **Abhishek vs. State of Madhya Pradesh** reported in **2023 SCC OnLine SC 1083**.

10. On the other hand, learned counsel appearing for the complainant/O.P. No. 2 submitted that the petitioners have assaulted and tortured the complainant as also threatened her on mobile to kill, but, fairly conceded that petitioners and the husband of the complainant are living separately from each other and they have no concern with daily and domestic affairs of the complainant and her husband.

11. It would be apposite to reproduce para-13, 14, 15, 16 and 17 of the legal report of Hon'ble Supreme Court



passed in the case of **Abhishek case** (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 vs. Bhajan Lal [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’.”

12. From the perusal of the record and considering argument as aforesaid, it transpires that the complainant/O.P. No. 2 has raised a very general and omnibus allegation *qua* alleged cruelty, torture and threatening against the petitioners. Admittedly, the petitioners are living separately from the complainant and *prima-facie* they have no concern with daily and domestic affairs of the complainant and her husband. It further appears that the complainant/O.P. No.2 has implicated the above-named petitioners in present complaint case being in-laws out of her malicious approach arising out of property dispute between her husband and petitioner no. 1, who are full brother.



13. In view of aforesaid factual and legal submissions and by taking a guiding note of **Abhishek case** (supra), the impugned order taking cognizance dated 12.02.2016 as passed by learned Sub-divisional Judicial Magistrate, Saharsa in connection with Complaint Case No. 805(C) of 2014 *qua* both above-named petitioners is hereby quashed and set aside along with all its consequential proceedings.

14. The application stands allowed.

15. Let a copy of this order be communicated to the learned trial court immediately.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08.07.2025
Transmission Date	08.07.2025

