

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 2238 of 2024

Ram Kumar Jalan, aged about 51 years, son of Late Satyanarayan Jalan, resident of Mohalla Kusta Ashram Road, Jhaunsagarhi, P.O. -B. Deoghar, P.S. -Deoghar, District -Deoghar (Jharkhand).

.... Petitioner

Versus

1. The State of Jharkhand
2. Aparna Keshari, wife of Ram Kumar Jalan and daughter of Shri Prakash Keshari, presently residing at Village -Bhawanipur, P.O. & P.S. -Sangrampur, District -Munger (Bihar).

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner	: Mr. A.K. Kashyap, Sr. Advocate
	: Mr. Anurag Kashyap, Advocate
For the State	: Mr. Vineet Kr. Vashistha, Spl. P.P.

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By the Court:-

1. Heard the parties.
2. Though notice has validly been served upon the opposite party no.2 yet no one turns up on behalf of the opposite party no.2 in spite of repeated calls.
3. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 528 of the BNSS, 2023 with the prayer to quash the order dated 31.05.2024, passed by the learned Sessions Judge, Deoghar in Criminal Revision No. 52 of 2024 which was filed challenging the order dated 16.03.2024 passed by the learned Sub -Divisional Judicial Magistrate, Deoghar whereby and where under the learned Sub -Divisional

Judicial Magistrate, Deoghar dismissed the petition dated 18.11.2023, filed by the petitioner under Section 239 of the Code of Criminal Procedure for discharge in connection with Deoghar (Mahila) P.S. Case No. 08 of 2022 corresponding to G.R. Case No. 981 of 2022. Prayer has also been made for quashing the order dated 02.04.2025, passed by the learned Sub -Divisional Judicial Magistrate, Deoghar in connection with Deoghar (Mahila) P.S. Case No. 08 of 2022 corresponding to G.R. Case No. 981 of 2022, whereby and where under charge has been framed under Section 498A of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act, now pending in the court of learned Sub-Divisional Judicial Magistrate, Deoghar.

4. The allegation against the petitioner is that the petitioner being the husband of the informant after one month of the marriage with the informant made the dowry demand of Rs.2,00,000/- and a four-wheeler vehicle. On the informant expressing her inability to meet the dowry demand, the petitioner along with his relatives assaulted and abused the informant. After the birth of the daughter of the informant, the petitioner again renewed the dowry demand of Rs.2,00,000/- and a four-wheeler vehicle; after going to the parental house of the informant. As the said dowry demand of the petitioner could not be met by the informant, the petitioner harassed the informant with a view to coerce her to meet the said unlawful dowry demand by assaulting her black and blue. The petitioner and his relatives used to abuse and

assault the informant frequently on even small matters. As a part of harassment for non-fulfilment of the unlawful dowry demand, the petitioner and his relatives took away all the articles of the informant including jewelleryes and drove out the informant with the children from her matrimonial house. A *Panchayati* was convened but the petitioner refused to take the informant unless the said dowry demand is met. On 07.02.2022, the informant went to her matrimonial house and knocked the door and she was taken inside and again beaten black and blue and the jewelleryes worn by her in her ear and neck were snatched away and again she was driven out from her matrimonial house after being threatened of dire consequences. On the basis of the written report submitted by the informant, police registered Deoghar (Mahila) P.S. Case No. 08 of 2022 and took up investigation of the case. After completion of the investigation, police found the allegations against the petitioner to be true and submitted charge sheet against the petitioner for having committed the offences punishable under Section 341/323/504/498A/34 of the Indian Penal Code and under Section 3/4 of the Dowry Prohibition Act. In the meanwhile, the learned trial court has also framed the charge for the offences punishable under Section 498A of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act. Before framing of the charge, the petitioner filed a discharge petition but the same was rejected by the learned Sub-Divisional Judicial Magistrate, Deoghar vide order dated 16.03.2024. The

petitioner filed Criminal Revision No. 52 of 2024 against the said order dated 16.03.2024 and the same was heard and disposed of by the learned Sessions Judge, Deoghar vide the order dated 31.05.2024. The learned Sessions Judge, Deoghar after perusal of the materials in the record found that in para -04, 25, 26, 30, 41 & 42 of the case diary, there are sufficient materials for framing of charge and the petitioner has failed to discharge his obligation as a husband to the informant and all the witnesses whose statement was recorded during the investigation of the case, supported the allegation of the informant against the accused persons of the case. The learned Sessions Court then observed that if the materials collected during the investigation of the case remains un rebutted, the offence is made out and thus without finding any illegality or irregularity in the order impugned before it, dismissed the criminal revision.

5. The learned senior counsel for the petitioner submits that the allegation against the petitioner is false. In fact, it is the informant and her brothers who used to beat and thrash the petitioner. It is then submitted that the learned court below failed to appreciate the fact that the present case has been lodged to wreak vengeance. It is next submitted by the learned senior counsel for the petitioner that the petitioner filed Original (Matrimonial) Case No. 163 of 2021 for grant of a decree of divorce in Family Court, Deoghar on 02.07.2021 and the present case has been lodged after the informant came to know about the filing of the said case by the

petitioner for the purpose of wreaking vengeance. Hence, it is submitted that the prayer as prayed for in this criminal miscellaneous petition be allowed.

6. The learned Special Public Prosecutor appearing for the State on the other hand vehemently opposes the prayer and submits that it is a settled principle of law that the defence of the accused cannot be considered by the High Court in exercise of its power under Section 482 of Cr.P.C. which corresponds to Section 528 of the B.N.S.S. and the first contention of the petitioner that the allegation against the petitioner is false is at best a defence of the petitioner and the other contention of the petitioner that this case has been instituted after institution of the case by the petitioner is also a defence of the petitioner because there is no material in the record to suggest that the informant had knowledge of filing of any case by the petitioner; before lodging this F.I.R. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

7. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **State of Madhya Pradesh vs. Awadh Kishore Gupta & Ors.** reported in **2004 2 Supreme 501**, that the High Court in exercise of its jurisdiction under Section 482 of Cr.P.C. which corresponds to Section 528 of the B.N.S.S. cannot consider the defence of the

accused person or the veracity of the evidence put forth by the accused.

8. It is also a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **State of Uttar Pradesh & Anr. vs. Akhil Sharda & Ors.** reported in **2022 SCC Online SC 820**, wherein the Hon'ble Supreme Court of India reiterated the settled principle of law that no mini trial can be conducted by the High Court in exercise of power under Section 482 Cr.P.C, the relevant portion of which reads as under :-

“Having gone through the impugned judgment and order passed by the High court has set aside the criminal proceedings in exercise of powers under Section 482 CrPC, it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482CrPC. As observed and held by this court in a catena of decisions, no mini trial can be conducted by the High Court in exercise of power under Section 482CrPC, jurisdiction and at the stage of deciding the application under Section 482CrPC, the High Court cannot get into appreciation of evidence of the particular case being considering. (Emphasis supplied)

9. Now coming to the facts of the case, the grounds for seeking the relief by the petitioner is mainly two in number. The first one is that the allegation against the petitioner is false. The said contention of the petition is no doubt a defence of the petitioner which the petitioner can raise during the trial of the case but certainly in view of the settled principle of law, this Court cannot consider the defence of the petitioner in the absence of any evidence in the record and without giving any opportunity to the

informant to rebut such contention of the petitioner; in exercise of its power under Section 528 of the B.N.S.S.

10. The second ground of the petitioner is that this case has been filed after institution of the Original (Matrimonial) Case No. 163 of 2021 by the petitioner for dissolution of his marriage with the informant but again, the same is a disputed question of fact. There is no material in the record to suggest that the informant was aware about institution of the case by the petitioner before lodging the F.I.R. and it is also a settled principle of law that merely because the F.I.R. was lodged after institution of a case for dissolution of marriage between the parties, that by itself is not a ground to quash the entire criminal proceeding, when otherwise the materials in the record of the criminal proceeding, if are considered to be true in their entirety, then the offences punishable under the penal provisions of law is made out.
11. Under such circumstances, this Court is of the considered view that this is not a fit case where the prayer made by the petitioner in this criminal miscellaneous petition is to be acceded to in exercise of its power under Section 528 of the B.N.S.S.
12. Accordingly, this criminal miscellaneous petition being without any merit is dismissed.

(Anil Kumar Choudhary, J.)