

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39688 of 2025**

Arising Out of PS. Case No.-9 Year-2024 Thana- MAHILA P.S. District- Samastipur

Sarfe Alam S/o- Md. Anwarool @ Anwarool @ Anawarul Haque @ Md.
Anawarul, Resident of Village- Muslimnagar, Jale, PS- Jale, Dist- Darbhanga
... .. Petitioner/s

Versus

1. The State of Bihar
2. Sajda Khatoon D/o- Md. Islam Khan, Village- Kurmi Tola, Chandauli PS-
Baini OP, Dist- Samastipur. Present Address Azad Chock P.S.- Dharampur,
Dist.- Samatipur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Md. Irfanul Haque, Advocate
For OP No.2 : Ms.Rekha Ranjan Prasad, Advocate
For the State : Mr.Damodar Prasad Tiwary, APP

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT**

Date : 08-12-2025

Heard Mr. Irfanul Haque, learned counsel appearing on behalf of the petitioner; Ms. Rekha Ranjan Prasad, learned counsel for OP No.2 and Mr. Damodar Prasad Tiwary, learned APP for the State.

2. The petitioner has preferred the application under Section 528 of BNSS, 2023 for quashing of order dated 29.08.2024 passed in Mahila PS Case No.09 of 2024 (Sup. G.R. Case No.6 of 2024) (G.R.Case No.375/24) by the learned SDJM, Samastipur, whereby the cognizance has been taken under Sections 341, 323, 504, 506 and 498A of IPC and Sections ¾ of D.P. Act.

3. The prosecution story in short is that the marriage



of the informant (O.P. No.2) solemnized with the petitioner (Sarfe Alam) on 28.06.2023 as per the Muslim customs at Azad Chowk, Dharampur, P.S.Town, District Samastipur and both the parties (petitioner and OP No.2) were living happily as husband and wife but just after two months of the marriage, the behaviour of the petitioner towards OP No.2 changed and he started demanding one Bike and Rs.2 lac in cash and due to the non-fulfilment of his demand, the petitioner fled away leaving her alone, thereafter, she went at her in-laws house at Darbhanga where allegedly she was assaulted by the family members of her in-laws i.e. father-in-law (Md. Anwarool), mother-in-law (Nasra Khatoon), *Bhaisur* (Nazri Alam and Sadre Alam) brother-in-law (Md. Ashif), Sister-in-law (Chandan Praween), *Mausera* brother (Md. Ibrar) and they ousted her from the house. She further alleged that her husband stopped giving response to her phone calls. On the basis of the said information of the informant, Mahila PS Case No.09/2024 had been registered under Sections 498A, 341, 323, 504 and 34 of IPC and Sections $\frac{3}{4}$ of Dowry Prohibition Act against altogether eight accused persons including the petitioner. The Police after completion of the investigation submitted charge-sheet, bearing No.95/24 dated 13.08.2024 under Sections 498(A), 341, 323, 504 and 506 of



IPC and Sections 3/4 of DP Act against the petitioner and other co-accused and on the basis of the said report, the learned SDJM, Samastipur took cognizance under Sections, 341, 323, 504, 506 & 498A of IPC and Sections 3/4 of Dowry Prohibition Act, vide order dated 29.08.2024 against which the present application has been filed.

4. It is alleged by the petitioner that prior to the present case, the informant had solemnized marriage with one Md. Suleman in the year, 2011 and she gave birth to a child namely, Shabrin Khaton but unfortunately her husband died, thereafter, she started working in I.M.C. Company where she developed intimacy with one Vikrant Kumar but he left her and she filed complaint petition bearing No.851 of 2020 and subsequently Warisnagar PS Case No.260 of 2020 dated 18.11.2020 under Sections 323, 342, 354, 406, 420, 376, 504, 506, 120(B) and 34 of IPC and Sections 3/4 of DP Act against Vikrant Kumar and others, in which the final form has been submitted by the Police, vide Final Form No.180/22 dated 12.07.2022.

5. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is innocent and no case as alleged is made out. He submitted that on the basis of false



accusation the petitioner is facing criminal prosecution for the alleged offence which had occurred between 28.08.2021 to 05.02.2024 whereas the FIR was lodged on 11.02.2024 without giving satisfactory explanation of such a long delay which creates doubt about the falsity of the case .

6. Learned counsel further submitted that the petitioner has already divorced OP No.2 under the provisions of Muslim “Talaq-e-Ahsan”. It is also submitted that the petitioner had neither tortured nor assaulted her.

7. Learned counsel denying that O.P. No.2 had ever visited the matrimonial home of her husband at Darbhanga, as such, the allegation of torture by the family members or in-laws is a cooked up story. He further submitted that the second marriage of the petitioner will not amount to cruelty. As such, the entire proceeding pending against the petitioner is fit to be set aside and quashed.

8. Mr. Dilip Kumar Roy, learned counsel, who represents the first wife of the petitioner, has shown no interest in the dispute between the petitioner and OP No.2.

9. Heard the parties.

10. The marriage of the complainant with the petitioner was solemnized on 28.06.2023. Further allegation is



that just after one month of the marriage, the petitioner had changed his behaviour towards O.P. No.2 and he assaulted her and after two months of the marriage i.e. on 28.08.2023, the petitioner demanded dowry of Rs.2 lac and a motorcycle and due to non-fulfilment of the same, the petitioner kicked her outside the matrimonial home i.e. on 05.02.2025. The petitioner assaulted her at her parental home where she was living with her parents. Further allegation is that the petitioner had harassed her both mentally and physically. However, the OP No.2 has not supported the alleged allegation of the harassment nor OP No.2 has given any specific date, place or manner, in which the alleged incident had taken place.

11. Any unlawful demand of any property or valuable security and on failure of the same the husband or his relatives subject the women to cruelty can be punished for the offense. Cruelty is defined under Section 498A of IPC, which is reproduced hereinafter::

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—

Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.— For the purpose of this section, “cruelty” means

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or



physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

12. In this regard, specifically dealing with the allegation relating to Section 498A IPC, the Apex Court in case of ***Shobit Kumar Mittal vs. State of U.P. & Anr.*** reported in ***2025 INSC 1152*** has held that the court cannot ignore the missing specifics in the FIR which is the basic premise for invoking the criminal machinery of the state. The Apex Court in ***Paragraph no. 18*** has held *inter alia* as follows:

“...merely stating that the accused/appellant has mentally harassed the complainant/respondent No.2 with respect to a demand for dowry does not fulfill the ingredients of Section 498A of IPC, specially in Page 9 of 14 absence of any cogent material or evidence on record to substantiate the said allegations. The term “cruelty” cannot be established without specific instances. The tendency of invoking the aforesaid provisions, without mentioning any specific detail, weakens the case of the prosecution and casts serious aspersions on the probability of the version of the complainant. Therefore, this Court cannot ignore the missing specifics in the FIR which is the basic premise for invoking the criminal machinery of the State. In such cases involving allegations of cruelty and harassment, there would normally be a series of offending acts, which would be required to be spelt out by the complainant against perpetrators in specific terms to initiate criminal proceedings against them. Therefore, mere general allegations of harassment without pointing out the specific details would not be sufficient to continue criminal proceedings against any person.”

13. Earlier to the above judgment, the Apex Court in case of ***Manju Ram Kalita v. the State of Assam***, reported in ***(2009) 13 SCC 330***, relying on earlier precedents observed that



the meaning of “**Cruelty**” differs in each statutory provision and hence must be established in the context of Section 498A of IPC. The conduct of the man, the seriousness of his acts must be compared with the likeliness of the woman to commit suicide, etc. It must be established that the woman has been subjected to cruelty continuously or at least in close proximity of time of lodging the complaint. Petty quarrels would not come under the purview of “cruelty”. Accordingly, the Court set aside the conviction order under Section 498A of IPC.

14. Therefore, the Apex Court held that before initiating the judicial proceeding the learned magistrate must ascertain whether there is any material present in support of the allegation. In the case of *State of West Bengal vs. Mohd. Khalid* reported in *1995 1 SCC 684*, and *Manharibhai Muljibhai Kakadia vs. Shaileshbhai Mohanbhai Patel* reported in *2012 10 SCC 517*, considering the overall allegation and material collected in course of investigation *inter alia* held as follows :-

“It is trite law that Magistrate takes cognizance of the offence when he applies his judicial mind to take steps to ascertain whether there is material to initiate judicial proceedings against an offender.”

15. The record of the present case reveals that, the



Investigation Officer has closed the investigation and submitted final form in absence of any material/evidence before the learned concerned Magistrate. The material information is given in paraphrase no.9 of the present application is being reproduced as under :-

“9. That the informant is a dubious and litigant lady. Prior to the present case, she has solemnized marriage with one Md. Suleman son of Md. Mojibul of Village : Chaknur Ward No.18, P.S. : Muffasil, District Samastipur in the year, 2011 and out of their wedlock, a female child namely Shabrin Khatoon was born, but due to accident, husband of the informant namely, Md. Suleman died. Thereafter, to earn her livelihood, she was started working in IMC Company, whereby she developed intimacy with one Vikrant Kumar, after some time, he left her, then a complaint petition no.851 of 2020 was filed in the court of SDJM, Samastipur and subsequently Warisnagar PS Case No.260 of 2020 dated 18.11.2020 was lodged under Section 323, 342, 354, 406, 420, 376, 504, 506, 120(B), 34 of IPC and Sections 3/4 of D.P.Act.”

16. It is now established principal of law that when a court takes *cognizance* of an offence, it means that the court accepts that there is sufficient basis to proceed with the case where investigation uncover any evidence, the basis for taking cognizance otherwise in want of any material on record, cognizance is not taken.

17. The Apex Court dealing with the situation in the case of *Tula Ram v. Kishore Singh*, (1977) 4 SCC 459 in para nos.16 has dealt with about what would mean cognizance, *inter alia*, as under:

“3. Before embarking on this enquiry it may



also be necessary to consider the legal import and significance of the term “taking cognizance” as used in Sections 190, 200 and 202 of the Code. Before however considering the various aspects of the matter it may be necessary to summarise the facts which have led to the enquiry in the appeal before us.

7. The question as to what is meant by taking cognizance is no longer *res integra* as it has been decided by several decisions of this Court. As far back as 1951 this Court in the case of *R.R. Chari v. State of Uttar Pradesh* [1951 SCC 250 : AIR 1951 SC 207 : 1951 SCR 312] observed as follows:

“Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence.”

While considering the question in greater detail this Court endorsed the observations of Justice Das Gupta in the case of *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Abani Kumar Banerjee* [AIR 1950 Cal 437] which was to the effect:

“It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) of the Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter — proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g. ordering investigation under Section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.”

8. Section 190 of the Code runs thus: “Subject to the provisions of this Chapter, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf under sub-section (2) may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.”

It seems to us that there is no special charm or any magical



formula in the expression “taking cognizance” which merely means judicial application of the mind of the Magistrate to the facts mentioned in the complaint with a view to taking further action. Thus what Section 190 contemplates is that the Magistrate takes cognizance once he makes himself fully conscious and aware of the allegations made in the complaint and decides to examine or test the validity of the said allegations. The Court prescribes several modes in which a complaint can be disposed of after taking cognizance. In the first place, cognizance can be taken, on the basis of three circumstances: (1) upon receiving a complaint of facts which constitute such offence; (2) upon a police report of such facts; and (c) upon information received from any person other than the police officer or upon his own knowledge, that an offence has been committed. These are the three grounds on the basis of which a Magistrate can take cognizance and decide to act accordingly. It would further appear that this Court in the case of Narayandas Bhagwandas Madhavdas v. State of West Bengal [AIR 1959 SC 1118 : (1960) 1 SCR 93, 106 : 1959 Cri LJ 1368] observed the mode in which a Magistrate could take cognizance of an offence and observed as follows:

“It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter — proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202.”

15. In these circumstances we are satisfied that the action taken by the Magistrate was fully supportable in law and he did not commit any error in recording the statement of the complainant and the witnesses and thereafter issuing process against the appellants. The High Court has discussed the points involved thread-bare and has also cited a number of decisions and we entirely agree with the view taken by the High Court. Thus on a careful consideration of the facts and circumstances of the case the following legal propositions emerge:

“1. That a Magistrate can order investigation under Section 156(3) only at the pre-cognizance stage, that is to say, before taking cognizance under Sections 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation under Section 156(3) though in cases not falling within the proviso to Section 202 he can order an investigation by the police which would be in the



nature of an enquiry as contemplated by Section 202 of the Code.

2. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

3. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

4. Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 as described above.”

18. Having examined the First Information Report and evidences collected by the Investigating Officer (IO) in the course of investigation, has not even collected material evidence against the petitioner, it appears that the learned Magistrate without arriving to his satisfaction based on the reason to believe that there was material or evidence to support the allegations made in the FIR, has taken cognizance under sections 341, 323, 504, 506 and 498A of IPC and Sections ¾ of D.P. Act.



19. Taking into consideration, in entirety the allegation made in the FIR and in absence of any material collected during the investigation, any complain alleged anytime before lodging of the FIR by OP No. 2, I am of the opinion that the learned Magistrate had taken cognizance of the alleged offence, without applying his judicial mind, which is legally unsustainable in eyes of law and deserves to be quashed and set aside.

20. Accordingly, the entire proceedings and order taking cognizance dated 29.08.2024 passed by the learned SDJM, Samastipur in Mahila PS Case No.09 of 2024 (Sup. G.R. Case No.6 of 2024) (G.R. Case No.375/24) by the learned SDJM, Samastipur is hereby quashed and set aside in respect of the petitioner.

21. With the above observation/direction, the present application stands disposed of.

(Purnendu Singh, J)

chn/-

AFR/NAFR	AFR
CAV DATE	NA
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