IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.81169 of 2024
CNR No. BRHC011070622024

Arising Out of PS. Case No.-160 Year-2023 Thana- SAHARSA COMPLAINT CASE District- Saharsa

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1.

2.

3.

... ... Petitioner/s

Versus

1. The State of Bihar
2.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ravindra Kumar Singh, Adv. Mr. Dharmendra Kumar Paswan, Adv. Mr. Suraj Kumar, Adv. Ms. Rinki Kumari, Adv. Mr. Chandra Kishor, Adv.
For the Opposite Party/s	:	Mr. Abhay Kumar, APP
For the O.P. No.2	:	Mr. Dharmendra Kr. Paswan, Adv. Ms. Deepshikha, Adv.

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CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
CAV JUDGMENT

Date : 09-10-2026

Heard learned counsel for the petitioners, learned APP for the State and learned counsel for the O.P. No.2.

2. The present application had been initially filed for quashing of the order dated 01.05.2023 passed by the learned Judicial Magistrate-1st Class, Saharsa in connection with Complaint Case No.160C of 2023, whereby and whereunder cognizance had been taken against the petitioners

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for offences under Sections 323, 420, 495 and 496 of the Indian Penal Code (hereinafter to be referred as 'IPC'). Subsequently, by way of an I.A. No.01/2026, the order dated 10.09.2026 passed by the learned Judicial Magistrate-1st Class, Saharsa has also been challenged, whereby the discharge application filed by the petitioners under Section 245 Cr.P.C., has been rejected.

3. From perusal of the records, it appears that charges have not been framed in the present case as this Hon'ble court vide an order dated 17.09.2026 has directed the learned Trial Court not to frame charges till further orders.

4. The prosecution case, in brief, is that the complainant came into contact with accused
son of petitioner nos. 1 and 2, through *Jeevansathi.com*, where he represented himself to be unmarried and employed as a Sub-Inspector in the Bihar Police. Relying upon the said representation, the complainant got married to him on 22.06.2022 at Vidyapati Dham Temple, Samastipur. It is alleged that,on account of marriage, received a gold ring and clothes as *shagun* and, on his request, Rs.1,00,000/- was deposited towards hotel booking for the proposed ring ceremony. Thereafter, the complainant's family allegedly paid Rs.50,000/- in cash and two amounts of Rs.49,500/- each to

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and also provided jewellery and other articles. In all, accused is alleged to have received approximately Rs.36,56,251/-, apart from jewellery and other articles, and subsequently demanded further money for purchase of a flat.

It is further alleged that, after the marriage, kept the complainant in a hotel at Patna and did not take her to his house on the pretext of the death of his aunt. When petitioners herein, came to the hotel, the complainant allegedly came to know that was already married and had two children from the said wedlock and that he was not employed as a Sub-Inspector in the Bihar Police. Lastly, the allegation against the petitioners is that, in connivance with they concealed his existing marriage and employment status and facilitated the marriage of the complainant with him. When the complainant informed her father about the aforesaid facts, the accused persons abused and threatened her and took away her cash, jewellery and other articles, whereafter paying the due of Rs.39,000 of hotel, the complainant was taken back to Saharsa by her father. Though Amit Kumar Rai and petitioner no.1 allegedly assured the complainant's father that the said money, jewellery and articles

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would be returned, the same were not returned.

5. Learned Counsel on behalf of the petitioners, at the outset, has submitted that petitioner nos.1, 2 and 3, happen to be the father-in-law, mother-in-law and 1st wife of the husband of the complainant respectively and there is no specific or overt act attributed against these petitioners rather the allegations against them are general and omnibus in nature. It is further submitted that the main allegations with regard to the receipt of money (as evident from para 12 of the complaint itself), concealment of marriage and mis-representation of employment on post of Sub-inspector, are against the accused Amit Kumar Rai. There is no allegation with regard to demand or receipt of money from complainant's family against these petitioners.

6. It is further pointed out that petitioner no.1, the alleged father-in-law, was employed on the post of ASI in Jharkhand and had no knowledge about the act, if any, committed by accused, . Further, the learned Counsel has relied upon the duty attendance register to contend the fact that on the alleged date of marriage, i.e. 22.06.2022, he had marked his attendance in the said register, which shows that on the alleged date of marriage he was on his duty in Jharkhand,

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thereby negating his presence during the alleged marriage. It has also been submitted that petitioner no.1 had not made any telephonic communication with the father of complainant. Therefore, the continuation of criminal proceedings against these petitioners, in the absence of specific material against them, would amount to abuse of the process of law.

7. Lastly, the learned counsel for the petitioners has contended that the order dated 10.09.2026 rejecting the discharge petition is unsustainable as there is no specific allegation or material against the petitioners showing their involvement in cheating, fraud or receipt of any amount, rather, the Complainant herself states that Rs.18 lakhs was transferred to the account of her husband and another Rs.18 lakhs was spent on gifts, with no amount alleged to have been transferred to petitioner no.1, Indrajeet Rai. Further, there are material discrepancies regarding the total amount allegedly paid, besides an unexplained delay of about 42 days in instituting the complaint. It is further submitted that cognizance under Section 495 IPC, without cognizance under Section 494 IPC, is legally unsustainable, and the ingredients of Sections 323, 420 and 496 IPC are also not disclosed against the petitioners. Thus, the allegations being general and omnibus and no specific overt act

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being attributable to the petitioners, the impugned order directing them to face framing of charge is liable to be quashed.

8. *Per contra,* the learned counsel on behalf of Opposite party no.2 has contended by stating that the present application is misconceived, as the complaint, statements of the complainant and enquiry witnesses and the documents on record disclose sufficient prima facie material against the petitioners. The petitioners are specifically alleged to have participated in the fraudulent matrimonial arrangement by concealing the previous marriage and other material facts of Amit Kumar Rai, and their role in the alleged financial transactions and matrimonial conduct has also been brought on record. The bank transaction details further support the allegations regarding the financial dealings connected with the marriage. Thus, the allegations cannot be said to be vague or baseless at this stage.

9. It is further submitted that the petitioners have already availed the remedy of discharge under Section 245 Cr.P.C., which has been rejected by the learned court below vide order dated 10.09.2026 upon finding sufficient material for framing of charge, and the matter is now fixed for 15.10.2026. The questions which are disputed relating to the knowledge, role and participation of the petitioners require appreciation of

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evidence and cannot be adjudicated by conducting a mini trial in exercise of jurisdiction under Section 482 Cr.P.C. The repeated non-appearance of the petitioners despite summons, warrants and proceedings under Section 82 Cr.P.C. is also a relevant circumstance. Accordingly, no ground for interference with the order of cognizance or the subsequent order rejecting discharge is made out and the present application is liable to be dismissed.

10. I have heard the rival contentions of the parties and have perused the materials on record.

11. From a perusal of the instant complaint and the S.A. of the complainant, it would appear that the gravemen of the allegations is against the alleged husband of the complainant/O.P. No.2 . Right from the inception it was the said as per allegations, who was contacted by the father of the complainant with regard to a proposal of marriage between the complainant and him. There are incidental allegations of talks with petitioner no.1, the father of who was posted at Jharkhand as ASI of Police. The complaint further reveals that money transaction was done in the account of and marriage was fixed for 22.06.2022 when the said marriage was solemnized in a temple but she was not taken to the matrimonial house on the

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pretext that there was death in the house and that she was kept in a hotel in Patna for some time where she stayed for two months. However, a disclosure is made on Dec, 2022 by the parents and the first wife of who are the petitioners herein, that was already married and has two children also from the wedlock. She has then made allegation against her husband of ill-treating her and engaging in scuffle etc., and since all the accused persons left her back in the hotel, she also left with her father. The allegations also reveal that the complainant's father talked with accused persons when they accepted their fault and agreed to return the money and articles but the same was not done.

12. In her S.A., the complainant admits that she did not lodge any complaint with the police and has tried to explain the delay in lodging the present complaint on the pretext that she was given an assurance of return of money. It has also been admitted that they neither inquired about job nor tried to enquire about his house etc. and believed on the words of the said and his father (petitioner no.1).

13. From the entire narration recited above, it clearly emerges that there is a direct allegation against of having mis-represented himself as a Police

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Officer and all bank transaction was made in his account. There is mention of some amount being transferred in the account of one who has been alleged to be an acquaintance of petitioner no.1 but the same is strongly denied on behalf of the petitioners of having any connection with him or with the money allegedly transferred in his account. It further seems strange that a marriage would be solemnized without any contact with the family members and after marriage was being solemnized in the temple, her husband would keep him in a hotel and not take her to his house.

14. Upon reading of the exhaustive statement of the complainant on S.A., this Court has also noticed that there is no mention of family members being present in the marriage and a vague reference has been made of giving some gifts to the bride-groom and his family members. Had there been any involvement of the family members in the said marriage, there would be no reason for the parents and the first wife of coming to the hotel in December 2022, where she was staying with the said to inform her that he is already married and also has children. Even after said disclosure being made by the petitioners, as admitted by the complainant, what ensues was scuffle between her and her

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husband and she has not made any allegations of either heated exchange of words or scuffle etc. against the family members who are the present petitioners. The subsequent assurance of paying back the money by the accused persons would not lead to the inference that they were aware of the said marriage of the complainant with or were actively involved in the same.

15. With regard to petitioner no.1 it is specifically pointed out that he was posted at Jharkhand as an ASI in Police Dept. and a copy of the attendance Register (Annexure-2) would show that on the alleged date of marriage i.e. on 26.02.2022, his attendance was marked and he was on duty. It is also a fact that the present complaint case has been filed after an inordinate and unexplained delay of more than a month and the same has been filed after due thought and deliberation, roping in the family members of and especially, his father, Petitioner No.1 for obvious and oblique motive, as he happens to be a Government Servant.

16. The present case also seems to suffer from a serious legal flaw emerging from the order taking cognizance. While the complaint was registered for offences under Sections 406, 420, 467, 468, 471, 323, 377, 379 and 498A of the IPC and

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Section 3/4 of Dowry Prohibition Act, cognizance was taken for offences under Section 420, 323, 494 and 495 of IPC. It appears strange that without taking cognizance under Section 494 of IPC, the learned Magistrate has proceeded to take cognizance of the offences under Section 495 and 496 of IPC. In case the present matter involved a case of bigamy, it was imperative that cognizance be taken under Section 494 of the IPC. Moreover, Section 495 and 496 are both based on the preceding Section 494 and the import and consequence of these provisions, as per the very language of the statute, remains confined to the husband or wife who have contracted a second marriage during the life time of the previous husband or wife, as the case may be. For the purposes of clarity the provisions of Section 494, 495 and 496 of IPC are being quoted hereunder:-

> **"Sec. 494 IPC- Marrying again during lifetime of husband or wife.—***Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*
>
> *(Exception)-This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,nor to any person who contracts a marriage during the life of a former husband or*

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wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

Sec. 495 IPC- Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.—*Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

Sec. 496 IPC- Marriage ceremony fraudulently gone through without lawful marriage.—*Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

17. The very opening line of Section 495 of IPC indicates that only such person can be made an accused under this Section, who has committed an offence defined in the last preceding Section i.e. 494 of IPC. Section 496 also makes it

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evident that a person who goes through the ceremony of being married with fraudulent and dishonest intention being aware that he is not getting lawfully married, is sought to be made an accused. None of these provisions expressly contemplate the implication of members of the family of the person who actually gets married unlawfully and with fraudulent intention including concealment of earlier marriage. It is only the spouse against whom the aforesaid offences would be attracted.

18. At this stage, this Court would gainfully refer to the case of ***S. Nitheen & Ors. Vs. State of Kerala & Ors,*** reported in ***(2024) 8 SCC 706*** wherein the Hon'ble Supreme Court had quashed the charges under Section 494 read with Section 34 of IPC against the appellants who were relatives and friends, and some of them, who even attended the second marriage. The said charge was quashed as against those accused persons while the trial of two persons who were entering into bigamous marriage was allowed to continue. Paragraph no.20 of the case of ***S.Nitheen (supra)*** is reproduced as hereunder:-

> *"**20.** As a consequence of the above discussion, we are of the view that allowing the proceedings of the criminal case to be continued against the appellants would tantamount to gross illegality and abuse of process of court. The order framing charge as well as the order rejecting the revision petition and criminal miscellaneous petition preferred by the appellant-accused do not stand to scrutiny."*

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19. Upon the discussions made hereinabove, the essential ingredients of Section 494 of IPC are being elucidated as hereunder:-

> 1. The accused spouse must have contracted the first marriage.
> 2. The spouse concerned must have contracted a second marriage during subsistence of the first marriage.
> 3. Both the marriages must have been performed in accordance with the due requirements of the personal law applicable to the parties.

20. The ingredients make it clear that no person, other than the spouse to the second marriage, could be made an accused with the charge of offence under Section 494 of IPC simpliciter. The same theory would be applicable to the provisions of 495 and 496 of IPC also as both the sections are dependent upon the preceding section i.e. Section 494 of IPC. Moreover, neither Sections 34 of the IPC dealing with common intention of committing an offence nor Section 109 relating to abetment of offence, nor any conspiracy under Section 120B IPC has been levelled in the complaint nor a cognizance thereunder has been taken. The order rejecting discharge application of the petitioners has also not made any reference to such consideration and has proceeded to reject the discharge petition filed under Section 245 of Cr.P.C, fixing date of framing

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of charge. In absence of Section 34, 109 and 120B of IPC, the offences alleged against the petitioners further lose their force.

21. The Hon'ble Supreme Court, recently dealing with the case under Section 494 and Section 498A read with 34 of IPC lodged by the wife against her husband and other family members has taken note of ***S. Nitheen (supra)*** to hold that mere knowledge that an act is being or has been committed by another person does not, by itself establish the requisite common intention and considering that the evidence was insufficient to bring home the said charges, set aside the criminal proceedings against the family members of the alleged husband as being distinct from the case of the husband. It is to be noted here that in the aforementioned case, Section 34 of the IPC was also levelled, whereas in the present case there is no levelling of Section 34, 109 or 120B of IPC nor cognizance has been taken thereunder.

22. It thus emerges from the foregoing discussion that family members of an accused husband cannot be directly charged with the offence under Section 495 IPC being similar and based upon 494 IPC and can only be pursued against the individual entering into the second marriage while keeping the first marriage a secret to a new partner. The family members and

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relatives who have not committed the primary act of marrying or concealing the marriage himself, even presence or attendance at the weeding would not make them liable under the said offence and the provisions apply only to the erring spouse who contracts the subsequent marriage. A family member would only be dragged with charges of criminal conspiracy or abetment, but such ingredients are also not disclosed either in the complaint or in the exhaustive S.A. of the complainant, in the background that the complaint was filed after inordinate delay of 42 days after due thought and deliberation.

23. Further, the ingredients of offences under Section 323 and 420 of IPC also do not appear to be made out as against the petitioners, inasmusch as, there is direct allegation of cheating the complainant by way of mis-representation etc. and also the act of scuffle has been specifically attributed to the alleged husband and also in the wake of the fact that according to the complainant herself, it was these petitioners who came and informed her that her husband was already married to Petitioner No.3. In such circumstances, there appears to be a patent illegality in the order taking cognizance of the aforesaid offences against these petitioners whose case is clearly distinct from the case of the alleged husband

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. Although the discharge order has been challenged by the Interlocutory Application, this Court finds the basic and primary order of the cognizance itself, as against the petitioners to be not in accordance with law. As such, any subsequent order passed in pursuance thereof and subsequent thereto, would also fail as being bad in law. In this regard, this Court would gainfully refer to the cases of ***State of Orissa and Anr. vs. Mamta Mohanty [(2011) 3 SCC 436]*** and ***Anand Kumar Mohatta vs. State (NCT of Delhi), [(2019) 11 SCC 706]***, wherein the Hon'ble Apex Court has held that if an order is bad at initial stage, all further proceeding consequent thereto, will be non-est and will have to be necessarily set aside.

24. Thus, criminal prosecution against these petitioners is bad, both on facts and law. The case of these petitioners appears to be covered within the parameters and ambit of the category (1) and (7) of the case of ***State of Haryana & Ors. vs. Ch. Bhajan lal & Ors.***, reported in ***(1992) supp (1) SCC 335***, as no offences, as alleged, are made out against the petitioners and the vexatious nature of allegations roping in these petitioners, who happen to be the family members of the alleged husband of the complainant, is apparently attended with mala fide in order to wreak vengeance

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from the main accused thereby causing undue harassment to the petitioners, especially, Petitioner no.1 who is a Government Servant posted as Jharkhand.

25. Upon a careful consideration of the aforementioned discussion on the factual scenario and the settled legal position, this Court is of the considered view that allowing the present criminal proceedings to continue against the petitions would tantamount to abuse of the process of the Court. As such, the impugned order date 1.05.2023 whereby cognizance was taken, so far as it relates to these petitioners, stands quashed and consequently, the subsequent order dated 10.09.2026 whereby the discharge application of the petitioners herein, was rejected is also hereby set aside.

26. Accordingly, the present application is allowed.

(Soni Shrivastava, J)

Harsh/-

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