

**HIGH COURT OF JUDICATURE AT ALLAHABAD****APPLICATION U/S 528 BNSS No. - 6618 of 2025**

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.....Applicant(s)

Versus

State Of U.P. And 2 Others

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Anshuman Singh, Vinay Kumar Dubey
Counsel for Opposite Party(s)	:	Ashok Kumar, G.A.

Judgement Reserved on 21.04.2026

Judgement Delivered on 15.05.2026

Court No. - 88

HON'BLE ACHAL SACHDEV, J.

1. Supplementary rejoinder affidavit filed on behalf of the applicant today in Court, is taken on record.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and Shri Ashok Kumar, learned counsel for the opposite party no.3.
3. The instant application u/s 528 BNSS has been preferred by the applicant to quash the summoning order dated 21.12.2024 passed by the learned Upper Civil Judge-First/A.C.J.M., Gorakhpur in Complaint Case No.2545 of 2024 (Aditya Kumar Tripathi vs. Priya Tiwari) under Section 500 I.P.C., P.S. Shahpur, District Gorakhpur.
4. The main contention of learned counsel for the applicant is that the order of trial court dated 21.12.2024 suffers from non-application of judicial mind as the trial court has failed to take into account factum of the impotency of opposite party no.3 by the applicant, which is supported by potency test report dated 27.08.2024 conducted at Medanta Hospital, Gurugram confirming low serum testosterone levels and same has been annexed at Annexure No.11 to the instant application and without consideration of truthfulness in imputations made by the applicant, the trial court has erred in passing the summoning order against the applicant.

5. It is submitted by the learned counsel for the applicant that the aforesaid complaint dated 01.02.2024 has been filed by the opposite party no.3 against the applicant in order to pressurize her to withdraw all criminal cases that have been filed against him by her. He further submits that on 03.05.2024 the statement under Section 200 Cr.P.C. was recorded wherein a concocted story was narrated by the opposite party no.3 in order to frame the applicant and on 15.05.2024 and 03.07.2024, the statement under Section 202 of Cr.P.C of two witnesses in support of the complaint was recorded wherein no documentary evidence was ever produced by both the witnesses examined before the trial court. On an enquiry held by the police, police examined some independent witnesses, which were interested and hearsay in nature.

6. Moreover, opposite party no.3 had filed the divorce petition no.1637 of 2023 (Aditya Kumar Tripathi vs Priya Tiwari), under Section 13 of Hindu Marriage Act and also submitted that the applicant had filed a Transfer Petition No.535 of 2024 before Hon'ble Supreme Court and vide its order dated 18.04.2024 the same was allowed but prior to the order being passed, divorce petition was withdrawn by the opposite party no.3.

7. The applicant, being aggrieved by the non-consummation of marriage due to inability on part of the opposite party no.3 due to his medical condition, and the conduct of the opposite party no.3, initiated criminal proceedings against him before the Chief Metropolitan Magistrate, North West, Rohini Courts, Delhi, in domestic violence matter Criminal Case No.2139 of 2023 (Priya Tiwari vs. Aditya Kumar Tripathi) and she had also moved an application for lodging of FIR against opposite party no.3, which gave rise to Case Crime No.0169 of 2024 u/s 498-A, 406, 354-A, 34 of IPC, Police Station Maurya Enclave, District North West of Delhi. Thereafter, in absence of any consummation of marriage, the applicant had filed Divorce Case No.1698 of 2024 under Section 12(1)(a) of the Hindu Marriage Act, 1955 for nullity of marriage and divorce.

8. It is further submitted that the marriage of applicant was solemnized with opposite party no.3 on 25.11.2022 but the marriage was never consummated due to the physical incompetency of opposite party no. 3 and as is substantiated by the medical examination report, which is a potency test conducted at Medanta Hospital, Gurugram, Haryana on 27.08.2024, which confirmed that his serum testosterone levels were very low, thereby substantiating his medical condition.

9. The learned counsel for the applicant further submits that in retaliation to

the said criminal proceedings, opposite party no.3 has filed the present false and frivolous complaint under Sections 499 & 500 IPC and the trial court without due application of judicial mind passed the summoning order against the applicant.

10. Learned counsel for the applicant submits that an offence of defamation necessitates the presence of an intent to cause reputational harm coupled with the act of publication to third parties but in the present case, the statements of applicant, being confined within court pleadings, fails to fulfill the essential ingredients of defamation as envisaged under Section 499 IPC and a bona-fide statement made in judicial proceedings for securing legal relief does not constitute defamation, which is covered under Exception 1 to Section 499 IPC but the learned Magistrate, without due application of judicial mind and in ignorance of well-established legal principles governing defamation and privileged communications passed the impugned order dated 21.12.2024 in a complaint that has been filed by the opposite party no.3 with an ulterior motive/intent to vex and harass the applicant and the present complaint is merely in response to the divorce proceedings that have been initiated by the applicant.

11. Learned counsel for the applicant has drawn the attention of the Court to the case of ***Raminder Kane Bodi vs. Jatinder Singh Bedi 1988 SCC Online Del 296***, wherein, it was held that where civil and criminal proceedings stem from the same factual substratum, the criminal complaint should not be permitted to override or obstruct the civil adjudication process and continuation of the present criminal case, would lead to gross miscarriage of justice.

12. Learned counsel for the opposite party no.3 submits that the applicant had called him impotent in front of her family members and landlord and in the month of October, 2023, he received a phone call from P.S. Mahila Thana that the applicant had filed a complaint against him alleging therein his impotency, upon which police had asked him to get medically examined and the whole issue spread throughout his family, relations and society by which his image was badly tainted.

13. Perused the record.

14. The applicant has filed paper no.68 as Annexure No.9, which is a FIR dated 11.04.2024, which has given rise to Case Crime No.0169 of 2024 u/s 498-A, 406, 354-A, 34 of IPC, Police Station Maurya Enclave, District North West of Delhi, wherein, the allegation of dowry demand has been

made and in the complaint, the informant has alleged absence of physical intimacy with opposite party no.3 and has further alleged that the marriage did not get consummated on the wedding night and has imputed that the opposite party no.3 was impotent. In her application before the court in paragraph 15, the applicant referred to the potency test that has been conducted by the opposite party no.3 on 27.08.2024 but the allegation pre-dates being dated 11.04.2024 contained in information given at Police Station Maurya Enclave, District North West of Delhi. In relation to FIR filed against opposite party no.3 alongwith his family members in relation to offence under domestic violence, cruelty, dowry demands, theft, criminal intimidation, criminal breach of trust, cheating, voluntarily causing hurt and outraging modesty, etc.

15. With the statement in relation to the opposite party no.3 being an impotent person has been made for the first time in FIR and the same cannot be said to have been made in a judicial proceedings.

16. Section 499 of I.P.C. defines defamation. Applicant is claiming benefit of Exception 1 of Section 499, which reads as under:-

"Exception 1 of Section 499 I.P.C.-Imputation of truth public good requires to be made or published. It is not defamation to impute anything which is true concerning any person, if it for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact."

17. The imputation that a person is a impotent prior to such fact being confirmed by medical examination report is an issue that cannot be raised in public domain and it is not covered under exception 1 of Section 499 I.P.C. and it does not relates to a bona-fide statement made in judicial proceedings for securing legal relief.

18. The Court is of the view that imputation can by words either spoken or intended to be read or by signs of visible representation though it may be in personal knowledge of that person. Alleging impotency without any medical evidence on the date on which such an imputation has been made would definitely amount to defamation.

19. Such an issue can be a ground for divorce subject to the condition that it is supported by chain of events such as medical examination report and repeated non-consummation of marriage but the same cannot be presumed on the basis of a single incident on the wedding night when the opposite party no.3 was unable to consummate the marriage.

20. The plea that has been raised by the applicant before this Court is that imputation that has been made in a criminal complaint against the opposite party no.3 by the applicant is substantiated by medical examination report and it was never intended as a malice towards opposite party no.3 and subsequent to filing of the criminal complaint against the opposite party no.3, the applicant has also filed a petition seeking divorce from opposite party no.3 before the competent court under Section 12(1)(a) of the Hindu Marriage Act, 1955.

21. No doubt a statement made in good faith to a person having lawful authority over subject matter will not amount to defamation as the same is covered under Exception 8 of Section 499 I.P.C. (Exception 8 of Section 356 B.N.S.). Now the question that has come up for consideration is, whether in the complaint to police, an imputation harms the reputation of opposite party no.3? A complaint to a police falls squarely within Exception 8 to Section 499 I.P.C. "Exception 8 of Section 356 B.N.S." since the complainant is making a statement to a public authority in the exercise of illegal right and if the allegation is relevant to the subject matter of the complaint here a matrimonial dispute and an ailment of marriage on ground of impotency. The person making the imputation enjoys the protection that has been provided under Exception 8 to Section 499 IPC if the imputation is not made with a malice intent to injure but as a part of a genuine grievance but had it been made maliciously with no connection to the actual complaint or had it been publicized beyond the complaint by sharing the same on social media or it is demonstrably false and has been made with the knowledge of its falsity or is irrelevant and inserted only to embarrass or injure the husband the protection would not be available.

22. The Hon'ble Supreme Court in the case of *Tiruvengada Mudali Vs. Tri purasundari Ammal reported in 1926 SCC OnLine Mad 37* has held that Exception 499 IPC are exhaustive for the cases they purport to cover and in light of the above mentioned case law, the protection if any available to the applicant must be assessed under the qualified privilege framework provided by exceptions to Section 499 notably Exception 8 and the facts stated in the statement. In the case of *Chaman Lal Vs. State of Punjab reported in (1970) 1 SCC 590*, the Hon'ble Supreme Court has laid down the basis for establishing good faith and bona-fide as specified in exceptions to Section 499 IPC while analyzing exceptions 1, 8 and 9 thereof and has held that under exception 8, an accusation in good faith to a person having lawful authority over subject matter is not defamation and further held that good faith requires care and caution and prudence in the background of contest and circumstances the position of person making imputation will regulate the

standard of care and caution.

23. For ready reference Exception 8 of Section 499 I.P.C. is as under:-

"Exception 8 of Section 499 I.P.C.- Accusation preferred in good faith to authorised person – It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation"

24. In the present case the applicant is wife of opposite party no.3 and her main allegation is that opposite party no.3 is impotent due to which he was unable to consummate the marriage on the wedding night, which has caused her great anxiety and thereafter she was harassed by her in-laws and other relatives for demand of additional dowry. The marriage was entered into by concealment of medical condition of opposite party no.3. The fact that was raised for the first time by applicant in her FIR, which has given rise to Case Crime No.0169 of 2024 u/s 498-A, 406, 354-A, 34 of IPC, Police Station Maurya Enclave, District North West of Delhi. It clearly shows that the statement has been made in good faith without malice towards opposite party no.3 and her statement is substantiated by medical examination report of opposite party no.3, therefore, the order impugned has been passed without considering these aspects and is liable to be set aside.

25. Accordingly, the present criminal misc. application succeeds and is **allowed**. The summoning order dated 21.12.2024 passed by the learned Upper Civil Judge-First/A.C.J.M., Gorakhpur in Complaint Case No.2545 of 2024 (Aditya Kumar Tripathi vs. Priya Tiwari) under Section 500 I.P.C., P.S. Shahpur, District Gorakhpur, is quashed.

May 15, 2026
Zafar

(Achal Sachdev,J.)