

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10873 of 2013

Arising Out of PS.Case No. -251 Year- 2012 Thana -MADHUBANI TOWN District-Madubani

=====

1. Md. Ismail S/O Late Md. Habib Resident Of Village- Hanuman Nagar,
Benipur, P.S.- Bahra, District- Darbhanga

2. Shamima Khatoon W/O Md. Ismail Resident Of Village- Hanuman
Nagar, Benipur, P.S.- Bahra, District- Darbhanga

3. Md. Shamse Alam S/O Md. Ismail Resident Of Village- Hanuman Nagar,
Benipur, P.S.- Bahra, District- Darbhanga

4. Md. Kamre Alam @ Hira S/O Md. Ismail Resident Of Village- Hanuman
Nagar, Benipur, P.S.- Bahra, District- Darbhanga Petitioners

Versus

1. The State Of Bihar

2. Matiur Rahman S/O Late Abdul Latif Rahman Resident Of Mohalla-
Laheriganj, P.S.- Madhubani Town, District- Madhubani

.... Opposite Parties

=====

Appearance :

For the Petitioners : Mr. Bhola Prasad, Adv.

For the Opposite Parties : Mr. Jharkhandi Upadhyay (App)

=====

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

3 21-05-2015 Heard the learned counsel for the
petitioners and the State.

This is a petition for quashing the order, dated 26.11.2012, passed by the Chief Judicial Magistrate, Madhubani, by which he has taken cognizance under Sections 323, 379, 406, 365 and 120b/34 of the Penal Code.

The learned counsel for the petitioners submits that on the complaint filed by the complainant, it was set up for lodging the first information report under Section 156(3) of the Criminal Procedure Code and after lodging the first information report the police investigated and after investigation submitted the final form. However, differing with the final form, the Chief Judicial Magistrate, Madhubani, has taken cognizance. It is, further, submitted that in the case diary there are materials to suggest that it was a case of love affairs and the petitioner married the victim, hence,

submitted that the allegation made that the cognizance taken under the above sections may not approver. However, the cognizance is taken on the material available on record and the Magistrate has right to differ with the police report for final form and apply his own wisdom. However, taking into consideration the allegation prima facie makes out a case, however, it is not proper at this stage to meticulously examine the materials or the facts or the evidence collected during investigation. It is also well settled that taking cognizance against wrong section may not render the order taking cognizance back and it is required to look at the stage of framing of the charge.

Hence, having regard to the facts and circumstances of the case, it is not proper, at this stage, to embark after meticulous examination of the material. However, the matter can be raised at the stage of framing of the charge/discharge.

Hence, I do not feel inclined to interfere with the order taking cognizance.

With these observations, this petition is **disposed off.**

However, the petitioners have option to raise the issue at the stage of framing of the charge and if the point raised, the Court, concerned, shall taking into consideration the material in the case diary and pass appropriate order.

(Gopal Prasad, J)

SA/-

U	√	T	√
---	---	---	---