

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43722 of 2012

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1. Ravi Kumar @ Ravi Kant Sharma son of Shatrughan Sharma,
2. Radha Devi @ Kumari Radha Sinha, W/o Ravi Kumar @ Ravi Kant
Sharma, Both resident of Village- Kurtha, P.S. Hilsa, Dist.- Nalanda.
..... Petitioner/s

Versus

1. The State of Bihar
2. Nutan Kumari wife of Raushan Kumar, D/o Sidheshwar Prasad Singh,
resident of village- Bahadurpur, P.O. Mankatha, P.S. Barahiya, District
Lakhisarai.
..... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Madheshwar Singh
For the Opposite Party No.1: Mr. Anil Kumar, APP
For the Opposite Party No.2: Mr. Lalan Kumar

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

3 07-05-2015 Heard the parties.

The petitioners have filed the present application under Section 482 of the Code of Criminal Procedure, 1973 invoking inherent powers of this Court for quashing the order dated 19.12.2011 passed in G.R. No. 362/2011 by the learned Chief Judicial Magistrate, Lakhisarai, whereby in disagreement with the police report cognizance has been taken under Sections 498(A), 406 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, and the case has been transferred to the court of learned Magistrate for trial and disposal, and further direction has been issued for issuance of summons against the accused persons including the petitioners for facing trial.

Learned counsel appearing on behalf of the petitioners submits that the opposite party no.2 originally filed a complaint petition which was subsequently transferred to the local police in terms of Section 156(3) Cr. P.C. and, accordingly, an F.I.R. vide Annexure-1 was lodged giving rise to Barahiya P.S. Case No. 40



of 2011 dated 16.04.2011 under Sections 498A and 406 of the Indian Penal Code as also under Section 3/4 of the Dowry Prohibition Act and 31 C.D. Act. It is further submitted that though the petitioners, being brother-in-law and sister-in-law of the informant (O.P. No. 2), are also named in the F.I.R. vide Annexure-1, but on close of investigation, the prosecution allegations against the petitioners were not found supported by the witnesses and, accordingly, final report No. 139 of 2011 dated 31.07.2011 vide Annexure-2 was submitted and the petitioners were not charge sheeted on account of lack of evidence against the accused persons including the petitioners. It is pointed out that the learned C.J.M. while passing the impugned order has disagreed with the police report vide Annexure-2 and has taken cognizance of the offences and has further directed the petitioners to face trial, but no reason(s) at all has been recorded for such disagreement. It is contended that the impugned order, being cryptic and non-speaking one is not sustainable and is fit to be quashed by this Court.

Learned Additional Public Prosecutor appearing on behalf of the State and the learned counsel appearing on behalf of the opposite party no.2, though have opposed the prayer made on behalf of the petitioners but have not been able to show that the learned Chief Judicial Magistrate while passing the impugned order has recorded any reason for such disagreement.

It is well settled that the learned Magistrate is legally authorised to disagree with the police report with respect to a criminal prosecution. He is not bound to accept the police report blindfolded, but for such disagreement he is required to record reasons showing therein that there is sufficient material for

proceeding against the accused persons. In the present case indisputably, the petitioners were not charge sheeted, yet learned Chief Judicial Magistrate disagreed with the police report, and took cognizance of the offences, but he has not at all recorded any reason for such disagreement. He has not indicated in the impugned order as to what are the materials collected by the Investigating Officer during the course of investigation, which, in his opinion, was sufficient for taking cognizance and proceeding against the accused persons including the petitioners. On the face of it, this Court finds that the impugned order is a non-speaking and cryptic one.

For the reasons recorded above, the impugned order dated 19.12.2011 passed in G.R. No. 362/2011 by the learned Chief Judicial Magistrate, Lakhisarai, is hereby quashed and the matter is remitted back to the learned Chief Judicial Magistrate, Lakhisarai with a direction to pass a fresh order strictly in accordance with law.

The application stands allowed to the extent indicated above.

(Birendra Prasad Verma, J)

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