

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44742 of 2012

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Md. Asharaf Idrishi @ Md. Asharaf, Son of Md. Israel Idrishi @ Israil
Khalifa.

.... Petitioner.

Versus

1. The State of Bihar.
2. Sabina Khatoon, wife of Md. Arbaj @ Md. Ehasan, resident of
Village-Mirganj, P.S. Sikandara, District- Jamui.

.... Opposite Parties.

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Appearance :

For the Petitioner : Mr. Prakash Kumar, Advocate.
For the State : Mr. Ashok Kumar 1, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

2 16-04-2015 Heard learned counsel for the petitioner and learned
counsel for the State.

This is an application for quashing the order dated 09.04.2012 passed by the learned Sub-Divisional Judicial Magistrate, Jamui, in Complaint Case no. 1258C of 2011 by which cognizance has been taken for offence under Section 498A of Indian Penal Code as well as Section 3/4 of Dowry Prohibition Act.

The prosecution case as alleged in Complaint Case no. 1258C of 2011 that complainant was kidnapped on 21.07.2011 and she was forced to marry with the son of the petitioner on 28.07.2011. After marriage, there is allegation of demand of dowry and subjecting to cruelty.

Learned counsel for the petitioner submits that prior to the institution of Complaint Case No. 1258C of 2011, the petition had filed a Complaint Case bearing No. 1182 of 2001 against the complainant of Complaint Case No. 1258C of 2011 leveling accusation under Sections 363, 364A and 384 of the Indian Penal

Code alleging therein that his son has been kidnapped, but the son of the petitioner returned, but his signature had been taken on plain paper. It is submitted that the present complaint case has been filed on 21.09.2011 after the cognizance has been taken in Complaint Case No. 1182 of 2001 filed by the petitioner's father. Hence the present complaint has been filed.

However, going into the allegation made in the complaint taken on face value makes out a prima facie case. The cognizance has been taken taking into consideration the complaint and the statement of the complainant and his five witnesses making out a prima facie case for offence under Section 498A of Indian Penal Code and 3/4 of Dowry Prohibition Act. However the submission that the case has been filed out of malice and vengeance is a question of fact to be decided at trial. The jurisdiction exercise under Section 482 Cr.P.C. is exceptional and requires to consider the entire conspectus of the case. It is not proper to exercise jurisdiction to decide whether the allegations are true or false as it amount to usurping the jurisdiction of the trial court and it is not proper to go into the question whether the allegations are true or false.

Hence I am not inclined to interfere with the order taking cognizance at this stage.

Accordingly, this petition is disposed of.

m.p.

(Gopal Prasad, J)

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