

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43900 of 2012

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Azad Khan @ Mannu S/O Late Halim Khan, Resident of Village- Piru,
Police Station- Haspura, District- Aurangabad

.... Petitioner/s

Versus

1. The State Of Bihar
2. Sabnam Naz W/O Md. Amjad Ali Khan R/O Village- Piru, P.S.-
Haspura, District- Aurangabad, At Present Resident of Mohalla- Gewal
Bigha, Koyali Pokhar, Police Station- Rampur, District- Gaya

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar
Mr. Md. Mushtaque Alam

For the Opposite Party/s : Mr. R.C.Singh, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

2 16-04-2015 The petitioner is aggrieved by the order dated 09.04.2012 passed in Complaint Case No. 2044 of 2011/ Tr. No. 1892 of 2012 by the learned S.D.J.M., Gaya, whereby cognizance has been taken under Section 498(A)/323 of the Indian Penal Code as also under Section 4 of the Dowry Prohibition Act, and the petitioner, besides two other accused persons, has been summoned to face trial.

Learned counsel appearing on behalf of the petitioner, by raising the plea of defence of the petitioner, submitted that the order taking cognizance is liable to be quashed. He further submitted that before taking cognizance, learned Magistrate has not applied his independent judicial mind to the facts of the case and, therefore, the impugned order taking cognizance is bad in law.

Learned Additional Public Prosecutor appearing on behalf of the State has opposed the prayer and has supported the impugned order.

After having heard the parties, this Court finds that there is no dispute of relationship between the petitioner and the complainant (Opposite Party no.2). Indisputably, the petitioner happens to be the elder brother of the husband of the complainant. In the petition of complaint there is allegation of demand of dowry and torture against the accused persons including the petitioner. This Court further finds that in the petition of complaint (Annexure-1), altogether five persons were arrayed in the category of accused, but the learned S.D.J.M. by the impugned order, has taken cognizance only against three accused persons including the petitioner, but remaining two persons have not been summoned to face trial. It clearly shows that while passing the impugned order, the learned S.D.J.M. has applied his independent judicial mind.

For the reasons recorded above, the application has to fail and is, accordingly, dismissed.

(Birendra Prasad Verma, J)

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