

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24582 of 2013

Arising Out of PS.Case No. -401 Year- 2011 Thana -MUZFFARPUR COMPLAINT CASE District-
MUZAFFARPUR

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Shailesh Kumar Mishra @ Shailesh Kumar S/o Sri Dinesh Chandra Mishra
At present Residing At 1 Wing, Flat No. 805, Palm Court Link Road, Malad
(W. Bengal), Presently Residing At Taroporu Tower, Flat No. 316, K-
Block, Lokhand Wala, Oshivera, Andheri Road, Mumbai

.... Petitioner/s

Versus

1. The State Of Bihar
2. Pragya Mishra W/o Shailesh Kumar Mishra, D/o Late Devendra Jha
Residing At New Colony Balu Ghat, P.S.- Town Nagar, District-
Muzaffarpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gyanendra Kumar Shukla

For the Opposite Party/s : Mr. Suresh Pd.Singh (App)

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

5 24-11-2016 Heard Sri Gyanendra Kumar Shukla, learned counsel
for the petitioner, Sri Suresh Prasad Singh, learned Additional
Public Prosecutor and Smt. Bela Singh, learned counsel for the
complainant.

The petitioner, who is husband of the complainant
/opposite party no. 2 has approached this court with a prayer to
quash an order dated 26.9.2012 passed by learned Sub Divisional
Judicial Magistrate (East) Muzaffarpur (hereinafter referred to as
“Magistrate”). By the said order the learned Magistrate has taken
cognizance of offence under section 498A , 406 of the Indian
Penal Code and Section 4 of the Dowry Prohibition Act.



Learned counsel for the petitioner assailing the order of cognizance submits that the complaint petition was filed after the petitioner had filed a divorce petition in the Family Court at Bandra , Mumbai . He has also tried to persuade the court that on going through the complaint petition no offence is made out nor any specific case is made. He has placed reliance on an order of this court reported in **2013 (3) PLJR 900 (Md. Badruddin Rain @ Md. Badruddin vs The State of Bihar & Anr.)** and submits that if in a complaint there is no allegation of commission of offence on a particular date order of cognizance may be set aside. He further submits that finally marriage has already been dissolved by a judgment of divorce which was passed in the year 2013 . He further submits that in view of the order of the Family Court petitioner is paying maintenance to the opposite party no. 2. According to learned counsel for the petitioner no purpose would be served in allowing to proceed with the complaint case. Accordingly he makes a prayer for quashing of the order of cognizance.

Learned Additional Public Prosecutor as well as learned counsel for complainant submits that order impugned is an order passed after conducting enquiry and apparently there is no error warranting interference.

Besides hearing I have perused the materials available on record. At the time of hearing learned counsel for the petitioner has taken this court to the entire complaint petition i.e. Annexure- '1' to the present petition . In the complaint petition petitioner was only made an accused and in complaint petition there is specific accusation against the petitioner regarding commission of offence under section 498A and other allied sections of the Indian Penal Code and once after conducting enquiry the learned Magistrate has passed order of cognizance unless there is jurisdictional error or any technical error it would be difficult to interfere with the impugned order. So far as order on which reliance was placed by learned counsel for the petitioner the court is of the opinion that the said order was passed in peculiar facts and circumstances of the case. No ratio in the case has been laid down. Moreover , this Court is of the opinion that if order of cognizance is passed on the basis of facts disclosed , order of cognizance may not be interfered with unless there is jurisdictional error or any technical error in the order impugned. I do not find any apparent error warranting interference.

The petition stands dismissed.

(Rakesh Kumar, J)

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