

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19223 of 2013

Arising Out of PS.Case No. -54 Year- 2012 Thana -AWADPUR District- KATIHAR

- =====
1. Alam, Son of Ainuddin
 2. Akmal
 3. Namaj
 4. Shamim @ Shah Shamim
 5. Heli

All are sons of Late Ainuddin.

6. Shaeda, wife of Ainuddin.

All are Resident of Village - Sonapur, P.S. - Abadpur, Distt. - Katihar

.... Petitioners

Versus

1. The State of Bihar

2. Dalai Khatoon, Wife of Alam, daughter of Late Mohsin, Resident of Village - Sonapur, P.S. - Abadpur, Distt. - Katihar

.... Opposite Parties.

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Appearance :

For the Petitioners : Mr.

For the State : Mr. /Smt. Veena Rani Prasad (App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
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ORAL ORDER

5 20-10-2016 Heard learned counsel for the petitioners as well as learned Additional P.P.

2. The petitioners are aggrieved by an order dated 18.01.2013 passed by the learned Chief Judicial Magistrate, Katihar in Abadpur P.S. Case No. 54 of 2012 whereby and whereunder the petitioners have been summoned to face trial for offences under Sections 498A and 204 of Indian Penal Code.

3. It has been submitted on behalf of the petitioners that subsequent to institution of present case, opposite party no. 2 had



filed a Complaint Case No. 2698 of 2012 wherein at paragraph 9, she had specifically incorporated the fact that she was ravished by Alam. She had also disclosed that she was not at all married with Alam. She had also disclosed that instead of registering the case for rape, the police official had registered the case for offence under Section 498A I.P.C. along with other allied Sections of Indian Penal Code, so submitted that in the aforesaid background, the instant prosecution happens to be vexed one and on account thereof, order impugned should be set aside.

4. Learned Additional P.P. opposed the prayer and submitted that for the purpose of summoning the accused to face trial, only prima facie case has to be seen.

5. Gone through the case diary with regard to status of each of the accused and finding that presence of petitioners nos. 2 to 6 have purposely been introduced without any kind of reliable material against their complicity, and on account thereof, the order impugned relating to petitioners nos. 2 to 6 namely, Akmal, Namaj, Shamim @ Shah Shamim, Heli and Shaeda are quashed and the petition is allowed to that extent.

6. So far, status of the petitioner, Alam is concerned, even considering the submissions made on behalf of the petitioner no. 1, in the background, the Complaint Petition No. 2698 of 2012

has been filed after the present case, apart from having specific disclosure under paragraph 11 thereof, wherein it has specifically been incorporated that as the petitioner in his bail petition had denied the factum of court marriage, which is the event to be substantiated during trial refrain to have the order impugned interfered with, not with regard to his interest.

7. That being so the instant petition is rejected with regard to petitioner no. 1.

(Aditya Kumar Trivedi, J)

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