

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 26782 of 2016

Arising Out of PS.Case No. -48 Year- 2014 Thana -CHAND District- BHABHUA (KAIMUR)

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1. Bipin Kumar @ Bipin Kumar Kharwar, son of Late Bahadur Kharwar.
 2. Lilawati Kuwar @ Lilawati Devi, wife of Late Bahadur Kharwar.
Both residents of Village – Ledri, P.S. – Chand, District – Kaimur (Bhabua).

.... Petitioners

Versus

1. The State of Bihar
2. Rinki Kumari, W/o Bipin Kumar, D/o Baikunth Prasad Kharwar, resident of Village – Mahro Kala (Jaypur), P.O. – Pipariya, P.S. – Mohania, District – Kaimur (Bhabua).

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Ramchandra Singh

For the Opposite Party/s : Mr. Madan Kumar

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL ORDER

2. 08-08-2016 Heard Sri Ramchandra Singh, learned counsel for petitioners and Sri Madan Kumar, learned Addl. Public Prosecutor.

Two petitioners have approached this Court invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, with a prayer to quash an order dated 15-04-2015 passed by Sri A.K.Singh, Judicial Magistrate 1st Class, Bhabhua (Kaimur) in Chand P.S. Case No. 48 of 2014, Tr. No. 5381 of 2015 registered for the offence under Section 307 of the Indian Penal Code and Sections 3 & 4 of the Dowry Prohibition Act, 1961. By the said order, the learned Magistrate has taken cognizance of offence against all the three accused persons, who were arrayed as accused in the F.I.R.



Learned counsel for petitioners submits that initially the case was instituted under Section 307 of the Indian Penal Code and Sections 3 & 4 of the Dowry Prohibition Act, 1961, however; subsequently the police submitted charge-sheet under Section 498 (A) of the Indian Penal Code, vide **Annexure - 2** to the petition i.e. chargesheet no. 57 of 2014 dated 30-11-2014. He submits that during investigation, the victim girl was even not examined, however; the police submitted chargesheet arraying petitioner no. 1 as accused in column no. 11 of the chargesheet, whereas, police exonerated other two F.I.R. named accused persons. However, the learned Magistrate, without assigning any reason and without application of mind, has passed order of cognizance and directed for summon of the all accused persons. He submits that it is true that learned Magistrate is competent to pass order of cognizance, differing with the police report, but once an accused is exonerated during investigation, while passing order of cognizance, succinctly reason is required to be assigned. However, in the present case, without application mind, in a mechanical manner, order impugned has been passed.

Learned Addl. Public Prosecutor opposing the prayer submits that there is no error in the order impugned.

Besides hearing, I have also perused the materials on record, particularly; Annexure - 2 to the present petition i.e. copy

of chargesheet submitted by the police, wherein only petitioner no. 1 was forwarded as accused. Other two F.I.R. named accused persons were exonerated. The impugned order indicates that the learned Magistrate, without considering the material on record, has passed the order of cognizance. It is true that while passing order of cognizance, there is no need to assign reason, but once an accused is exonerated during investigation and final report is submitted, then in the event of taking cognizance, differing with the police report, succinctly reason is required to be assigned.

After going through the order impugned, I do not find any indication as to what was the reason for differing with the police report and passing order of cognizance.

Accordingly, the order impugned i.e. order dated 15-04-2015 passed by Sri A.K.Singh, Judicial Magistrate 1st Class, Bhabhua (Kaimur) in Chand P.S. Case No. 48 of 2014, Tr. No. 5381 of 2015 is hereby set aside and the matter is remitted back to the concerned Magistrate to examine the record and pass order afresh. Order must be passed within a period of three months from the date of receipt/production of a copy of this order.

The petition stands allowed.

(Rakesh Kumar, J.)

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