

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24719 of 2016

Arising Out of PS.Case No. -139 Year- 2012 Thana -BAKHRI District- BEGUSARAI

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Rajesh Kumar son of Bino Mahto, resident of Village Barahiya Bahapur,
P.S. Maranchi, District- Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. Sangeeta Suman, Ex-wife of Rajesh Kumar and daughter of Hari Mahto,
resident of Village Bakhari, P.S. Bakhari, District- Begusarai.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Om Prakash Maharaj, Advocate.

For the Opposite Parties : Mr. Satyavrat Verma(App)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 16-08-2016 Heard both sides.

The petitioner filed this petition under Section 482 Cr.P.C. for quashing the order dated 03.02.2016 passed in G.R. No. 1672 of 2016 by which the learned Sub-Divisional Judicial Magistrate, Begusarai dismissed the petition of the petitioner filed under Section 239 Cr.P.C. for his discharge.

The facts in brief relevant for the disposal of the case are that the informant-opposite party no. 2 wife of petitioner lodged Bakhari P.S. Case No. 139 of 2012, alleging therein that her husband and other in-laws after her marriage with the petitioner on 10.05.2010 subjected her to physical and mental torture, due to non-fulfillment of demand of Rs. 2,00,000/- and a

Bolero vehicle.

The police after investigation submitted charge sheet against the petitioner-husband and the case against other accused persons was found untrue. Cognizance of the offence was taken and, thereafter, the petitioner-husband filed a petition under Section 239 Cr.P.C. and the same petition is dismissed vide order dated 03.02.2016.

Learned counsel for the petitioner submits that the petitioner filed Matrimonial (Divorce) Case No. 503 of 2012 and vide order dated 16.07.2014, the marriage of the petitioner with the opposite party no. 2 was dissolved by a decree of divorce *ex parte* by the Principal Judge, Family Court, Patna. The Principal Judge, Family Court, Begusarai vide order passed in Maintenance Case No. 93M/2012/252/2013 allowed the maintenance of Rs. 5000/- as interim maintenance to the informant and her minor son from the date of filing petition under Section 125 Cr.P.C. including Rs. 1800/- which was granted by the High Court in bail petition while the petitioner was granted bail. It is further submitted that the Dy. S.P., Begusarai and SHO Teghara vide Annexure-5 and Annexure-9 at page 25, reported that the opposite party-wife was not willing to live in the house of her husband. The husband made all efforts to keep his wife but the wife left the

house of her husband and went to her Naihar. The reports were not produced during the course of investigation.

The only question to be decided as to whether there is sufficient material to frame charge under Section 498A and other Sections of the Indian Penal Code against the petitioner. Section 239 of the Code of Criminal Procedure says as follows:

239. When accused shall be discharged.- *if, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.*

From bare perusal of Section 239 of the Code of Criminal Procedure, it appears that the Magistrate at the time of framing of charge under Section 240 of the Code of Criminal Procedure, has to see the documents and the materials collected by the police during the course of investigation and submitted in Court under Section 173 of the Code of Criminal Procedure.

It appears that the Magistrate has gone into all the documents and found that there are sufficient materials to frame charge under Sections 498A, 504 and 34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition against the petitioner. The report which was submitted to the Superintendent of Police, on any petition, by the Dy. S.P. or the SHO of Teghara police station is not at all relevant at the stage of framing of charge. Therefore, I do not find any merit in this petition.

Accordingly, the quashing petition is dismissed.

(Prabhat Kumar Jha, J.)

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