

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22137 of 2013

Arising Out of PS.Case No. -947 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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Harendra Kumar S/o - Sri Nanhak Ray R/o - Village - Mobarakpur, P.S. - Shahpur,
District – Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Officer Incharge Digha P.S. Patna , District - Patna
3. Sonu Kumar, s/o Nasib Lal
4. Leela Devi, w/o Nasib Lal
5. Nasib Lal, s/o not known,
all R/o Mohalla – Kurji Kothia, Bikash Nagar, P.S. – Digha, District Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Raj Dular Sah

For the Opposite Party/s : Mr. Sajal Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 18-08-2016

Heard Sri Raj Dular Sah, learned counsel for the petitioner
, Sri Madan Kumar, learned A.P.P. and Sri Sajal Kumar Sinha,
learned counsel , who has appeared on behalf of the opposite party no.
3 to 5.

The petitioner, who was informant in Digha P.S. Case No.



02 of 2011 registered for the offence under section 498(A)/ 304 (B)/ 34 of the Indian Penal Code, has approached this court invoking its inherent jurisdiction under section 482 of the Code of Criminal Procedure, with a prayer to quash an order dated 19.1.2012 passed by learned Chief Judicial Magistrate, Patna in Case No. 947(C - 2) of 2011. By the said order the learned Magistrate has taken cognizance of offence under section 182 / 211 of the Indian Penal Code against the petitioner on the recommendation made by the Officer Incharge of Digha Police Station, Patna in Digha P.S. Case No. 02 of 2011 .

Short fact of the case is that the petitioner had lodged a written complaint before the Officer Incharge of Digha Police Station alleging therein commission of offence under section 498(A) of the Indian Penal Code. It was alleged that his daughter namely Nitu Kumari was harassed for dowry. In the complaint before the police it was indicated that on 1st January 2011 he went to the in-laws house of his daughter where he found his daughter missing. This fact was disclosed in the F.I.R. However during investigation police found the case un-true primarily on the ground of statement of the victim lady recorded under section 164 of the Cr.P.C. Accordingly final report vide final report no. 33 of 2011 dated 17.4.2011 was submitted exonerating the accused persons. It was indicated in the report that prosecution report for prosecuting



informant under section 182 / 211 of the Indian Penal Code will be submitted subsequently. Subsequently on the basis of prosecution report submitted by the Police against the petitioner for offence under section 182 / 211 of the Indian Penal Code, the learned Chief Judicial Magistrate by the impugned order took cognizance of offence.

Learned counsel for the petitioner submits that in this case petitioner had filed a protest petition which was treated as complaint petition and after conducting enquiry the learned Judicial Magistrate 1st Class, Patna by its order dated 14.8.2012 has taken cognizance of offence under section 498(A) of the Indian Penal Code against the accused persons. It has been argued that since in a case which was found un-true by the Police, the learned Magistrate treating the protest petition as complaint petition has passed order of cognizance, prima facie offence under section 182 and 211 of the Indian Penal Code as recommended by the police is not sustainable in the eye of law and as such the impugned order of cognizance in the present case against the petitioner is liable to be set aside. It has also been submitted by learned counsel for the petitioner that presently petitioner's daughter is living peacefully with her husband and in-laws family and dispute has already been settled.

Sri Sajal Kumar Sinha, learned counsel who has appeared on behalf of the opposite party no. 3 to 5 by way of referring to the



counter affidavit tried to persuade this court to quash the order dated 14.8.2012 passed by Judicial Magistrate 1st Class, Patna in which cognizance order was passed and processes were directed to be issued against the opposite party no. 3 to 5 of the present case. Learned counsel tried to persuade the court that while exercising inherent jurisdiction this Court is well empowered to quash the said order also.

Besides hearing learned counsel for the parties I have also perused the material available on record. Fact remains that presently in the protest petition which was treated as complaint the learned Magistrate has already taken cognizance of offence. Meaning thereby that the prosecution report submitted by the Police for prosecuting the petitioner under section 182/ 211 of the Indian Penal Code has been found to be un-true. Accordingly the order of cognizance in Case No. 947(C-2) of 2011 passed by the Chief Judicial Magistrate, Patna dated 19.1.2012 is liable to be set aside and accordingly the same is set aside. So far submission of learned counsel for the opposite party no. 3 to 5 for quashing of the order of cognizance in complaint filed by the petitioner is concerned, this court is of the opinion that opposite party no. 3 to 5 in view of changed circumstances if so advised may avail appropriate remedy.

The petition stands allowed.

Proceeding against the petitioner in Case No. 947(C-2) of
2011 is set aside.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23-08-2016
Transmission Date	23-08-2016