

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No. 22303 of 2013**

Arising Out of PS.Case No. -496 Year- 2009 Thana -SAMASTIPUR COMPLAINT  
CASE District- SAMASTIPUR

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1. Mostakin Khatoon W/O Md. Khurshid  
2. Md. Khurshid S/O Late Md. Abdul Hafeez  
Both are resident of Village- Narhan Estate, P.S.- Bibhutipur,  
District- Samastipur.

.... .... Petitioners

Versus

1. The State of Bihar  
2. Jaitun Khatoon W/O Md. Khurshid R/O Village- Narhan Estate,  
P.S.- Bibhutipur, District- Samastipur

.... .... Opposite Parties

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**Appearance :**

For the Petitioner/s : Mr. Ashok Kumar Mishra, Adv.

For the Opposite Party/s : Mr. Aditya Narayan Singh-I, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**

ORAL JUDGMENT

**Date: 08-09-2016**

Heard Sri Ashok Kumar Mishra, learned counsel  
for the petitioner and Sri Aditya Narayan Singh-I, learned  
Addl. Public Prosecutor.

2. In this case, repeatedly despite valid service of  
notice, the complainant did not appear. Earlier, on  
04-07-2014, notice was directed to be issued to  
complainant/opposite party no. 2 and while directing for  
issuance of notice, further proceeding in Complaint Case No.  
496 of 2009 pending in the court of learned Sub Divisional  
Judicial Magistrate, Rosera (Samastipur) was directed to be



stayed. Despite valid service of notice, the complainant did not appear and thereafter, on 15-03-2016, the present petition was admitted for hearing. Lower Court Record was called for and interim order of stay dated 04-07-2014 was made absolute. Again, notice was directed to be issued to complainant/opposite party no. 2 in hearing matter. This time, notice was personally received by opposite party no. 2, even then, she preferred not to appear in this case. In view of aforesaid facts, it appears that the complainant is not at all interested to pursue the matter.

3. 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 19-12-2010 passed by learned Sub Divisional Judicial Magistrate, Rosera (Samastipur) in Complaint Case No. 496 of 2009, corresponding to Tr. No. 1126 of 2013. By the said order, the learned Magistrate has taken cognizance of offence under Sections 420, 467, 468, 320 and 498 of the Indian Penal Code.

4. Short fact of the case is that the complainant filed the aforesaid complaint against the petitioners disclosing therein that she was married to brother of petitioner no. 2, however; in a road accident, her husband died. Thereafter, it



was alleged that the accused persons, on the plea of getting compensation, got certain documents signed by the complainant and thereafter, some land, which was standing in the name of her husband, was got transferred in favour of accused persons. However, subsequently good sense prevailed and complainant was got married with petitioner no. 2 i.e. brother of late husband of the complainant. It was alleged that subsequently, she was tortured and ousted from the house. Thereafter, the present complaint was filed in the court of learned Additional Chief Judicial Magistrate, Rosera (Samastipur), vide Complaint Case No. 496 of 2009. By order dated 16-06-2009, the learned Additional Chief Judicial Magistrate, in view of provision contained in Section 192(2) of the Cr.P.C., transferred the record for enquiry and disposal to the court of learned Sub Divisional Judicial Magistrate, Rosera. On 24-06-2009, after the record was received on transfer, statement of complainant was recorded on S.A. Finally, by order dated 19-12-2010, the learned Sub Divisional Judicial Magistrate took cognizance of offences, as indicated hereinabove and directed for summoning the accused. Aggrieved with the order of cognizance, petitioners approached this Court by filing the present petition.

5. Sri Ashok Kumar Mishra, learned counsel for



petitioners, by way of referring to entire record of the court below, which has been received and kept on record, submits that the learned Addl. Chief Judicial Magistrate had firstly erred in transferring the record to the learned Sub Divisional Judicial Magistrate for enquiry and disposal without taking cognizance of offence. He submits that Section 192(2) of the Cr.P.C. prescribes that the learned Magistrate after taking cognizance of the offence can transfer the record to any other court for its enquiry and disposal. He further submits that after the case was transferred for enquiry, repeatedly complainant did not appear, whereas, the case was fixed for recording evidence of enquiry witness. On number of dates, neither the complainant appeared nor any witness was produced, however; without any change in the circumstance, the learned Sub Divisional Judicial Magistrate at much belated stage has passed the order of cognizance on 19-12-2010, which has been assailed in the present case. It was submitted by learned counsel for petitioners that after going through the entire complaint petition, no offence is made out and as such, a prayer has been made to quash the impugned order.

6. Sri Aditya Narayan Singh-I, learned Addl. Public Prosecutor tried to persuade the Court that there is no

illegality in the order of cognizance. He submits that on perusal of the complaint petition, it is evident that the petitioners have committed atrocities with the complainant.

7. Besides hearing learned counsel for the parties, I have also perused the materials available on record. On examining the Lower Court Record, it is evident that after the complainant was examined on S.A., she left interest in the complaint case. Repeatedly, on number of dates, though, the case was fixed for producing enquiry witness, neither any witness was produced nor complainant was present to do any *pairvi*. It would be appropriate to observe that on 05-01-2010, it was noticed by the learned Magistrate that complainant was absent. Next date was fixed for enquiry witness. Thereafter, continuously on nine dates, no enquiry witness was produced. Surprisingly, on 19-12-2010, though there was no change in the circumstance i.e. neither complainant was present nor any witness was present, the learned Sub Divisional Judicial Magistrate passed order of cognizance. On perusal of the Lower Court Record, it is evident that the complainant had left doing any *pairvi* and shown no interest in the matter. Same is position available in the present proceeding.

8. In the present case, twice notices were validly

served on complainant, even then, she has not appeared. Meaning thereby that she has lost any interest to pursue the matter. In such a situation, without going into the detail, the Court is of the opinion that allowing further proceeding in the present case will amount to abuse of the process of the court and as such, it is desirable to interfere with the impugned order and setting aside the entire proceeding.

9. Accordingly, the order of cognizance dated 19-12-2010 passed by the learned Sub Divisional Judicial Magistrate, Rosera, Samastipur and entire proceeding in Complaint Case No. 496 of 2009 (corresponding to Tr. No. 1126 of 2013) is hereby set aside and the petition stands allowed.

**(Rakesh Kumar, J.)**

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