

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32071 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

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Dharmendra Lal, Son of Rajendra Lal, Resident of Village - Nahauna,
P.O.- Sasaram, P.S.- Mufassil, District - Rohtas

.... Petitioner

Versus

1. The State of Bihar
2. Kali Babu Lal, Son of Late Mosafir Lal, Resident of Village-
Sundara, P.S- Ayar, District - Bhojpur

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Bajarangi Lal, Advocate

For the Opposite Parties : Mr. Harendra Prasad (APP)

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 31-01-2017

This application has been filed for quashing the order dated 01.10.2012 passed by learned Sub-Divisional Judicial Magistrate, Bhojpur at Ara in Complaint Case No. 1281-GR of 2009/ 3283 Tr. Of 2011 arising out of Protest –cum- Complaint case No. 775(C) of 2011 whereby the court below found prima-facie case against the petitioner and other accused persons for the offence under Sections 498-A and 323 of the Indian Penal Code as well as Section 4 of Dowry Prohibition Act.

It has been submitted on behalf of the petitioner that the husband of the daughter of the complainant has filed a case for



restitution of conjugal right under Section 9 of the Hindu Marriage Act. The girl has refused to settle the matter as appear from the order dated 09.11.2011 passed by Principal Judge, Family Court, Rohtas at Sasaram in Matrimonial case No. 193 of 2010. Counsel for the petitioner further submitted that initially, the police after investigation submitted final form against this petitioner. Thereafter, on the protest-cum-complaint petition filed by the complainant, learned Magistrate has passed the impugned order.

The counsels for the State and O.P.No.2 have appeared.

The counsel for the O.P.No.2 has submitted that the petitioner is the husband of the daughter of the complainant. She has fully supported the allegation made against this petitioner in her statement recorded during inquiry under Section 202 of Cr.P.C. The solemn affirmation of the complainant is annexed as Annexure-4 to the application which also supports the case.

From perusal of the impugned order, this court finds that learned Sub-Divisional Judicial Magistrate after recording S.A. of the complainant and other five witnesses has found a prima-facie case under Sections 498-A and 323 of Indian Penal Code and Section 4 of Dowry Prohibition Act against this petitioner and other accused persons as alleged in the protest- cum-complaint petition. From perusal of the statement of the victim girl Reeta Devi recorded during



inquiry, this court finds that she has supported the case and has stated about torture committed by this petitioner. Similarly, the complainant in the S.A. has also supported the allegation of committing torture by this petitioner and other accused persons. The court below is only required to see a prima-facie case at the time of holding inquiry under Section 202 of Cr.P.C on the basis of allegation made in the complaint petition and the statement of witnesses recorded under Section 202 of Cr.P.C.

Therefore, this court does not find any illegality in impugned order passed by learned Sub-Divisional Judicial Magistrate, Bhojpur at Ara, by which the learned Magistrate has found a prima-facie case against the petitioner under Sections 498-A and 323 of Indian Penal Code and Section 4 of Dowry Prohibition Act.

Accordingly, this criminal miscellaneous application is dismissed.

The petitioner is however given liberty to raise all the points which have been taken in this application at the appropriate stage in lower court which shall be disposed of in accordance with law without being prejudiced by this order.

(Sanjay Priya, J.)

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