

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36325 of 2013

Arising Out of PS.Case No. -626 Year- 2008 Thana -SITAMARHI District- SITAMARHI

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RAJENDRA PRASAD @ PAPPU S/O LATE KASHI NATH PRASAD
RESIDENT OF GASIYAR PATTI, GUNJ NO. 11, HARAMCHAK, P.S.
AND DISTRICT BETTIA.

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR.
2. SMT. NIVA KUMARI @ MUNNI D/O SRI JITTU LAL PRASAD AT
PRESENT RESIDENT OF MIRCHAE PATTI, P.S. AND DISTRICT
SITAMARHI.

.... OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s	:	Mr. Anil Kumar Singh, Adv. Mr. Rajeev Prakash, Adv.
For the State	:	Mr. Suresh Pd. Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3. 13-01-2017 Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor.

Petitioner, who happens to be an accused in connection, with Sitamarhi P.S. Case No.626/2008 has preferred instant petition against an order dated 21.06.2013 passed by learned Sessions Judge, Sitamarhi in Criminal Revision No.70/2013 which the petitioner had preferred against the order dated 02.05.2013 passed by SDJM, Sitamarhi in G.R. No.2505/2008 arising out of Sitamarhi P.S. Case No.626/2008 rejecting the prayer having been made on behalf of petitioner under Section 239 of the Cr.P.C. On account of marital acrimony having amongst the spouses, wife of the petitioner had filed Complaint Petition No. 1678/2008 against the petitioner and



others which was sent to concerned P.S. for registration and investigation on account thereof, Sitamarhi P.S. Case No.626/2008 was registered. After concluding investigation charge sheet was submitted against the accused so named therein including the petitioner on the basis of which cognizance of an offence was taken and petitioner along with others were summoned. At an earlier occasion, against the order of cognizance, Cr. Misc. No.37399/2009 was filed which was allowed with regard to others but, same was dismissed relating to the petitioner vide order dated 11.02.2013. Subsequently thereof, when the stage of framing of charge has arrived, a petition has been filed on behalf of petitioner under Section 239 of the Cr.P.C. which was rejected by the learned lower court as indicated above against which the criminal revision was filed before the learned Sessions Judge and after rejection thereof, instant petition has been filed.

Learned counsel for the petitioner has submitted that rejection of the petition against an order of cognizance relating to the petitioner would not guide the subsequent event nor the materials having considered at that very occasion would be the basis for framing of charge. In light of aforesaid submission, it has been submitted that learned lower court should have minutely gone through the materials having been collected by the Investigating Officer during course of investigation in order to search out whether those materials were sufficient to infer a prima



facie case against the petitioner justifying framing of charge. In this connection, it has further been submitted that there happens to be complete absence of cogent, reliable evidence in the case diary so much so that none of the independent witnesses have come forward to support the case of the prosecution. Consequent thereupon, the learned lower court should have discharged the petitioner which, not been acceded with. In likewise manner, the learned Sessions Judge while dismissing the criminal revision overlooked the same. So submitted that it is a fit case wherein successive orders are fit to be set aside.

The learned Additional Public Prosecutor opposed the prayer and submitted that instant petition would not be maintainable in the background of the fact that by this petition, petitioners filed second revision which is non-permissible in the eye of law.

It is needless to say that ambit and scope of exercise of power by the High Court under Section 482 of the Cr.P.C. would not govern with the stage having been taken at the end of the aggrieved person more so, by way of filing criminal revision as the same is to be exercised to part with justice and during course thereof, no infringement should be allowed.

Before coming to appreciate the submission having been made on behalf of petitioner, it looks desirable to incorporate paragraph 8 of a judgment reported in **2015 (2) PLJR 321 (SC)**



Sonu Gupta vs. Deepak Gupta & Ors wherein the Hon'ble Apex

Court held as follows:-

“8. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.”

In the aforesaid background when the materials available on the record have been gone through, it is apparent that successive orders passed by the learned lower court require no interference. Detailed scrutiny of the evidence is forbidden as it may cause prejudice to the interest of the petitioner during course of trial. Furthermore, the litigation being fought amongst the parties like maintenance case, matrimonial case, happens to be the subject of cross-examination whereunder court will be at liberty to



perceive which of the spouse is at fault in order to come to a right conclusion.

Accordingly, petition is found devoid of merit and is rejected.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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