

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49066 of 2014

Arising Out of PS. Case No.-2135 Year-2012 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

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Md. Monabber @ Manobber Hussain Son of Md. Anwar @ Ballo Resident of
Village : Bari Baliya, P.S. Baliya, District : Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Md. Sabir Son of Late Md. Alim Resident of Village : Kaswan, P.S. Baliya,
District : Begusarai.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Pandey, Adv

For the Opposite Party/s : Mr. MANISH KUMAR NO.2(APP)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 29-11-2017

Heard learned counsel for the parties.

This petition under Section 482 of Cr.P.C has been filed for quashing the order dated 16.09.2013 passed by learned Sub Divisional Judicial Magistrate, Begusarai in Complaint Case No. 2135C of 2012, by which the court below has taken cognizance against the petitioner under Sections 406 read with 34 of IPC and Section 3 of the Dowry Prohibition Act.

Briefly stated, the facts of the case is that complainant Md. Sabir has alleged in his complaint that agreement was made between the complainant and the accused family for marriage of her divorcee daughter namely Sabina Khatoon, with the petitioner. Petitioner is a teacher in Govt.



Primary School and acquainted with the family of the complainant. Complainant further stated that engagement was held on 28.08.2012 at 6:00 pm at the house of complainant in presence of witnesses and presentation and gifts and a gold ring was given to the petitioner and other family members. At the time of engagement the date of marriage was fixed on 08.09.2012 and the clothes for the petitioner and other family members were purchased. It has further been stated that on the date of marriage the petitioner's father send a message to the complainant for further deliberations and when he came to the house of accused no. 2 namely Md. Anwar with his well wishers, then accused no. 2 demanded further a motorcycle and Rs. 1 Lacs from the complainant. When barat did not come on scheduled date, he went to the house of accused petitioners and found that there was no preparation and they said that unless and until whole demand is fulfilled, the marriage could not be solemnized. The complainant went to the police station but police did not take appropriate action and thereafter this complaint is filed.

On the basis of complaint petition, statement of complainant on S.A. and statement of four inquiry witnesses the trial court found *prima facie* case to be made against the



petitioners and took cognizance of the offence and issued summons for their appearance. The court below found that there is sufficient material on the record for taking cognizance against all the accused under Sections 406 and 34 of IPC and Section 3 of Dowry Prohibition Act. Petitioner is accused no. 1 and cognizance was taken against him on 16.09.2013. Against the order taking cognizance, petitioner had filed Criminal Revision No. 01 of 2013 which was heard by adhoc Additional Sessions Judge 1st, Begusarai and dismissed by its order dated 25.06.2014. The revisional court called for the records of the complaint case and after going through the records found that there are sufficient materials in order to form a *prima facie* case against the petitioners and the trial court had rightly taken cognizance against the petitioners on the basis of materials available on record and there is no ground for revisional court to interfere in the order taking cognizance and dismissed the revision petition filed by the petitioners.

Petitioner has challenged both the orders before this Court under Section 482 of the Cr.P.C. This Court under its inherent jurisdiction cannot substitute the view of trial court in forming opinion that a *prima facie* case is made out against the accused-petitioners on the basis of materials available on the



record. The sufficiency and adequacy of materials is to be considered by the trial court and high court in its inherent jurisdiction cannot substitute its view for the summoning orders passed by the trial court. Both the courts have examined the matter and revisional court after considering all the aspect of the matter has dismissed the revision petition, as such this court is not inclined to interfere in the orders passed by the courts below, however, the petitioner is granted liberty to raise all the issues raised in this petition as well as other issues availabe to him in law at the time of consideration of discharge petition or framing of charge, if not already framed.

With the said liberty and observation, this petition is disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	30.11.2017
Transmission Date	30.11.2017

