

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Miscellaneous No.87 of 2016**

Arising Out of PS.Case No. -110 Year- 2013 Thana -DINARA District- SASARAM (ROHTAS)

=====

1. Basant Kumar Singh @ Dimple Son of late Rama Shankar Singh
 2. Laxmina Devi wife of late Rama Shankar Singh Both are resident of
 Village- Ganj Badhs ara, P.s Dinara, District Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rana Pratap Singh, Advocate

For the Opposite Party/s : Dr. Ajeet Kumar (APP)

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL ORDER**

3 03-02-2017 Heard learned counsel for the petitioners as well as
 learned APP.

2. Petitioners are none else than husband and
 mother-in-law of the alleged victim, Rikki Kumari. The
 prosecution has been launched on the basis of the written report
 having been filed by the father Narvadeshwar Rai. After
 concluding investigation, charge-sheet was submitted whereupon
 vide order dated 04.12.2013, cognizance of an offence punishable
 under Sections 341, 323, 498(A), 506, 34 IPC and ¾ of the Dowry
 Prohibition Act has been taken up.

3. After furnishing police papers when the matter has
 come up at the stage of charge, a petition under Section 239
 Cr.P.C has been filed on their behalf praying therein to discharge



which the learned lower court rejected vide order dated 17.04.2015 and the same happens to be the subject matter of challenge.

4. Manifold arguments have been advanced at the end of learned counsel for the petitioners while assailing the order impugned. The first and foremost argument is that during course of investigation, the alleged victim Rikki Kumari was not examined and so, whatever allegation has been attributed by the father is found uncorroborated. In likewise manner, it has also been submitted that for want of examination of Rikki Kumari, prosecution could not lie as she was the victim, she was aggrieved and if she has not cared herself to come forward to point out fingering against the petitioners, then in that event, others could not be allowed to launch a malicious prosecution.

5. Consequent thereupon, instead of rejecting the prayer of the petitioners, the learned lower court should have allowed the same.

6. Learned APP opposes and submitted that present stage does not warrant meticulous examination of event. Strong suspicion is sufficient to justify framing of charge.

7. In *Sonu Gupta v. Deepak Gupta* as reported in *2015(2) PLJR 321(SC)* three judges' Bench of the Hon'ble Apex



Court had occasion to consider the same and further laid down the following principles:-

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.

9. Learned senior advocate for the appellant Mr. Aman Lekhi has relied upon a catena of judgments such as :-

- (i) [Bhim Lal Shah vs. Bisa Singh & Ors.](#) [17 CWN 290];
- (ii) [State of Orissa & Anr. vs. Saroj Kumar Sahoo](#) [(2005) 13 SCC 540];
- (iii) [Riyasat Ali vs. State of U.P.](#) [1992 CrL.J. 1217];
- (iv) [Nupur Talwar vs. Central Bureau of Investigation & Anr.](#) [(2012) 11 SCC 465];
- (v) [Amit Kapoor vs. Ramesh Chander & Anr.](#) [(2012) 9 SCC 460];
- (vi) [Asmathunnisa vs. State of Andhra Pradesh & Anr.](#) [(2011) 11 SCC 259];
- (vii) [MEDCHL Chemicals & Pharma \(P\) Ltd. vs.](#)



[Biological E. Ltd. & Ors.](#) [(2000) 3 SCC 269];

(viii) [State of Uttar Pradesh vs. Paras Nath Singh](#) [(2009) 6 SCC 372];

(ix) [B. Saha & Ors. vs. M.S. Kochar](#) [(1979) 4 SCC 177];

(x) [Matajog Dobey vs. H.C. Bhari](#) [AIR 1956 SC 44];

(xi) P.K. [Pradhan vs. State of Sikkim](#) [(2001) 6 SCC 704].

These need no discussion because settled propositions of law reiterated therein have already been noticed earlier.

8. Now the points having been raised at the end of petitioners is to be seen under the aforesaid principle so enunciated by the Hon'ble Apex Court. Meticulous examination with regard to deficiency having caused during course of investigation will not dent upon the prosecution case much less at the stage of framing of charge otherwise the Criminal Court will become puppet at the hands of the Investigating Officer. It is pious duty of the Criminal Court to see that an innocent should not be convicted and in likewise manner guilty should not get an escape. Further, when a criminal case is launched, it is to face different stages and consideration of the material happens to be different during those stages. At the time of judgment, meticulous examination of the materials having adduced during course of trial is must but so far taking of cognizance as well as framing of



charge is concerned, that happens to be the nascent stage and further for that purpose only, even a strong suspicion has been found sufficient to justify the action of the Court so that the prosecution be able to place relevant materials even with the aid of Section 311 Cr.P.C. which on account of callousness or inadequacy of the Investigating Officer could not collect during course of investigation.

9. Consequent thereupon, submissions having at the end of learned counsel for the petitioners that the victim was not at all examined by the Investigating Officer during course of investigation, is not at all found valid ground to accede to the prayer having been made on behalf of petitioners to set aside the order impugned.

10. That being so, the instant petition sans merit and is, accordingly, dismissed.

(Aditya Kumar Trivedi, J)

perwez

U		T	
---	--	---	--

