

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5796 of 2015

Arising Out of PS.Case No. -2233 Year- 2011 Thana -GOPALGANJ COMPLAINT CASE District-
GOPALGANJ

- =====
1. Abdul Manan @ Manan Ahmad Son of Rashid Ahmad
 2. Najma Begum Wife of Rashid Ahmad All are resident of Mohalla -
Nawalpur Purani Qila, Ward No.8, P.S. Siwan (Town), Distt. - Siwan

.... Petitioners

Versus

1. The State of Bihar
2. Mehnaj Bejum @ Jugnu W/o Abdul Manan, R/o Mohalla - Nawalpur
Purani Qila, Ward No. 8, P.S. Siwan (T), Distt. - Siwan at present
Daughter of Manjur Ali, R/o Mohalla - Hajiyapur, Ward No. 26, P.S. +
Distt. - Gopalganj

.... Opposite Party

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Appearance :

For the Petitioners	:	Mr. Sudama Singh Mr. Surendra Kumar Mishra Mr. Angad Kumar
For the State	:	Mr. U.S.P.Singh(APP)
For O.P. No. 2	:	None

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL ORDER

3 18-12-2017 Heard learned Counsel for the petitioners as well as the

learned Counsel for the State. None appears on behalf of Opposite
party No. 2.

The petitioners seek quashing of the cognizance order
dated 6.11.2012 passed by learned SDJM Gopalganj in Complaint
Case No. 2233 of 2011, thereby taking cognizance of the offence
under Section 498A of the IPC and issuing summons against the
petitioners to stand trial.

Learned Counsel for the petitioners submits that the
complainant filed the present complaint on 26.9.2011 under Section



498A of the IPC and on 14.10.2011 she filed a police case i.e. Gopalganj PS Case No. 317 of 2011. Learned Counsel for the petitioners further submits that the police case is still at the investigation stage as the police has not submitted its report after investigation and in the complaint case cognizance has been taken, so for the same offence two cases cannot be instituted.

Having considered the submission and on perusal of the record the Court finds that for the same offence the present Complaint Case No. 2233 of 2011 was instituted and approximately after a month the police case was also instituted by the complainant vide Gopalganj PS Case No. 317 of 2011, so for the same offence the complainant has chosen two forums i.e. the complaint and the police case. In such situation the procedure required to be adopted by the trial court is prescribed in Section 210 Cr.P.C. which states that when a complaint is instituted and it is brought to the notice of the Magistrate during course of enquiry or trial of the said complaint that an investigation by the police is also in progress in relation to the same offence, which is subject matter of enquiry or trial in the complaint, then the Magistrate is required to stay the proceeding of such enquiry or trial and to call for a report of the same from the Police Officer conducting the investigation, thereafter on receipt of the report proceed further in view of proviso (2) or (3) of Section 210 Cr.P.C. If on a report by the Police Officer under Section 173 Cr.P.C. cognizance of the offence is taken by the Magistrate against the



person, who is also accused in the complaint case, then the Magistrate is required to try together the complaint case as well as the case arising out of police report treating both the cases as instituted on a police report. However, if the police report does not relate to the accused of the complaint case or if the Magistrate does not take cognizance of any offence on the police report then the Magistrate shall proceed with the enquiry or trial which was earlier stayed by him in the complaint case. The Criminal Procedure Code clearly gives provision to conduct trial in such manner in a case where complaint as well as police case is instituted.

The petitioners are directed to bring to the knowledge of the Magistrate where the complaint case is pending and the court below is directed to proceed in the matter in view of provision contained in Section 210 of Cr.P.C. as discussed above.

With the above observations the application stands disposed of.

(Arun Kumar, J.)

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