

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.40319 of 2016**

Arising Out of Complaint Case No. -2102 Year- 2010 Thana -GAYA District- GAYA

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Mahawash Abrar @ Mahwash Abrar wife of Md. Mushtaque D/o Late Abrar Ahmad Resident of Mohalla- Z-5/211/1 Bhangakhal Kanchan Tola, Matiabrur, Kolkata-44 (W.B.) At present Dhami Tola, Bank Road, Police Station-Kotwali, District-Gaya

.... .... Petitioner

Versus

1. The State of Bihar
2. Md. Mushtaque son of Md. Abdul Karim @ Zahaji
3. Md. Abdul karim @ Zahaji S/o Late S. Chaudhary
4. Maimun Nisha wife of Md. Abdul Karim @ Zahaji

2 to 4 are resident of Mohalla- Z-5/211/1 Bhangakhal, Kanchan Tola, Matiabrur, Kolkata-44 (West Bengal)

.... .... Opposite Parties.

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**Appearance :**

For the Petitioner/s : Mr. Saghir Ahmad, Advocate  
Mr. Sanjay Kumar Sinha, Advocate  
For the State : Mr. Jharkhandi Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 29-08-2017**

The petitioner is the complainant of Complaint Case No. 2102 of 2010 pending in the court of Sub-divisional Judicial Magistrate, Gaya. The said case was filed *inter alia* for the offences punishable under Section 498-A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act.

2. It is alleged in the complaint that the complainant was married to the opposite party no. 2 Md. Mushtaque on 20.11.2006 in



accordance with Muslim rites and custom, but after the marriage, demand for TV, fridge, cooler, godrej, almirah etc. was made by her husband and his relative. It is further alleged that for non-fulfilment of demand of the same, the complainant was subjected to cruelty in various ways. Subsequently, the complainant was blessed with a female child. However, the cruelty being meted out upon her went unabated and, ultimately, the complainant was driven out of her matrimonial home.

3. After recording the statement of the complainant and holding inquiry under Section 202 of the Code of Criminal Procedure, the accused persons named in the complaint were summoned to face trial.

4. Subsequently, a joint compromise petition was filed before the court of jurisdictional Magistrate on 07.11.2012. Since then, the complainant did not examine any witness before the court. The case was repeatedly adjourned from one date to another for examination of witnesses before charge. Since the complainant failed to produce any witness between 2012 and 10.02.2016, eventually, the trial magistrate closed the prosecution evidence, vide order dated 10.02.2016.

5. Being aggrieved by the aforesaid order dated 10.02.2016, the complainant filed a revision petition before the court



of Session. However, the revisional court taking into consideration the facts noted above, vide order dated 18.04.2016, dismissed the revision application holding that no infirmity, irregularity, illegality and jurisdictional error was found in the impugned order.

6. Being aggrieved by the aforesaid order dated 18.04.2016, the present application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner before this Court.

7. Learned counsel for the petitioner has submitted that the impugned order passed by the court below is bad in law as it failed to take into consideration that the complainant had not examined any witness before charge. He has submitted that in absence of examination of witness, it would be extremely difficult for the complainant to establish the charge leveled in the complaint.

8. I have heard learned counsel for the petitioner and perused the record.

9. In the opinion of this Court, the prayer of the petitioner cannot be allowed on account of the fact that ample opportunity was granted by the court below to examine the witnesses before charge. The cognizance in the case was taken immediately after the complaint was filed after examination of the inquiry witnesses in 2012 itself. The court had summoned the accused persons to face trial. The complainant not only failed to adduce any evidence before



charge, but also filed an application for compounding the offence. Under such circumstances, if the Magistrate had closed the case of the complainant after more than three years from the date of passing of the summoning order, no illegality can be found with the order passed by the learned Magistrate.

10. Moreover, though the present application has been filed under Section 482 of the Code of Criminal Procedure, the same is in the nature of second revision, which is barred under Section 397(3) of the Code of Criminal Procedure.

11. Accordingly, the application, being devoid of any merit, is dismissed.

**(Ashwani Kumar Singh, J.)**

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 01.09.2017 |
| Transmission Date | 01.09.2017 |

