

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36255 of 2014

Arising Out of P.S. Case No. -136 Year- 2011 Thana -KEOTI District- DARBHANGA

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Surendra Sah @ Surendra Prasad S/o Late Ram Prasad Sah , Resident of Village
- Khiram Pathra , Police Station - Keoti , Dist. -Darbhanga.

.... Petitioner

Versus

1. The State of Bihar.

2. Kranti Devi, W/o Dilip Yadav, Resident of Village - Khiram Pathra, Police
Station - Keoti , Dist. - Darbhanga.

.... Opposite Parties.

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Appearance:

For the Petitioner/s : Mr. Madheshwar Singh, Advocate.

For the State : Mr. Nawal Kishore Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 28-08-2017

Heard learned counsel for the petitioner and learned A.P.P.
for the State.

2. The petitioner, in the present case, is seeking quashing
of the order dated 19.07.2013 passed by learned Chief Judicial
Magistrate, Darbhanga in Keoti P.S. Case No. 136/2011 / G.R. No.
2935/2011, by which cognizance has been taken under Section 420
IPC and summons has been issued against the petitioner.

3. Learned counsel for the petitioner submits that after
lodging of the First Information Report as contained in Annexure-1 to
the present application, police conducted investigation and, based on
the statements of the witnesses and the supervision note of the



Dy.S.P., submitted final form finding that the occurrence, as alleged, is not proved. Learned counsel further submits that although police submitted the final form (Annexure-2 to the present application), the learned Chief Judicial Magistrate differed with the police report as, according to him, there are statements / materials in Paragraphs 6 and 7 of the case diary which are sufficient to take a *prima facie* view that the offence, as alleged, has been committed and there are sufficient materials to proceed against the accused. Learned counsel submits that as per her own statement in the F.I.R. the informant says that her husband was a mad man and, therefore, the statement of her husband recorded in the case diary should not have been relied upon by the learned Chief Judicial Magistrate. He would, therefore, submit that there is no eye witness to the occurrence, as alleged, and the order taking cognizance is fit to be quashed.

4. On the other hand, learned A.P.P. for the State opposed the prayer for quashing of the order taking cognizance. In his submission, the statements of the victim and his wife, as recorded in Paragraphs 6 and 7 of the case diary, are *prima facie* showing that the alleged occurrence has taken place and there are sufficient materials to take cognizance and proceed against the accused persons. According to the learned A.P.P., the learned Chief Judicial Magistrate has rightly differed with the police report and the order taking cognizance has



been passed on the basis of the materials available on the record. Hence, no interference is required by this Court at this stage.

5. I have considered the submissions made at the bar and have perused the case diary which is available on the record. A perusal of the case diary would show that the complainant-opposite party no. 2 and her husband, both have come forward to make specific allegations and, in course of investigation, they have supported their case. The Investigating Officer has recorded their statements in Paragraphs 6 and 7 of the case diary, a perusal of which would show that there are sufficient materials to take cognizance and proceed against the accused persons. There are statements of other witnesses also in the case diary. However, an analysis of those statements would not be required at this stage; the evidentiary value of the witnesses would be examined only by the trial court. At this stage of taking cognizance, the court should not be concerned with the ultimate likelihood of conviction or acquittal of the accused. It is sufficient to find that the materials, which are uncontroverted as such, give rise to a *prima facie* case and the identity of the accused against whom materials are there which are also well established, for purpose of issuance of summons.

6. In the facts and circumstances of the case, this Court is not inclined to interfere with the order taking cognizance. The



application is, therefore, dismissed.

7. The petitioner may raise all such pleas, which are available to him, before the learned court below at appropriate stage.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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