

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.754 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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1. Jagriti Kumari Wife of Jai Prakash, Daughter of ram Pravesh Sharma Resident of Mohalla - East Lohanipur, P.S. - Kadamkuan, Town and District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar. null null
2. Jai Prakash Son of Rama Shankar Thakur Permanent resident of Village & P.O. - Gaura, P.S. - Bihiya, District- Bhojpur at present Jai Prakash (M) in the office of the Deputy Director, S.I.B. (MHA) Govt. of India, at Leh (Jammu & Kashmir) Pin Code 194101.
3. Rama Shankar Thakur Son of Not Known Permanent resident of Village & P.O. - Gaura, P.S. - Bihiya, District- Bhojpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subroteswar De

For the Respondent/s : Ms. Indu Bala Pandey

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

Date: 12.01.2017

Heard learned Counsel for the petitioner and learned Additional Public Prosecutor representing the State.

2. The petitioner is aggrieved by an order, dated 31.07.2014, passed by learned Sub Divisional Judicial Magistrate, Patna, in Complaint Case No. 497 (C) of 2011, whereby he has rejected a petition filed under Section 319 of the Code of Criminal Procedure, 1973 ("the Code", in short).

3. The petitioner is the wife of Opposite Party No. 2. She has filed a complaint case, disclosing offences punishable under Section 498A of the Indian Penal Code and



Sections 3/4 of the Dowry Prohibition Act, implicating Opposite Party No. 2 and other members of his family. The Court, however, by order, dated 25.05.2011, took cognizance of the offence punishable under Section 498A of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act and issued summonses to Opposite Party Nos. 2 and 3 only and not against other persons.

4. The petitioner moved before the learned Sessions Judge, Patna, by filing Criminal Revision No. 537 of 2011 against the order, dated 25.05.2011, raising a grievance against non-summoning of other accused persons, which came to be dismissed by an order, dated 03.01.2012.

5. Subsequently, at the trial, some of the witnesses were examined, whereafter the petitioner filed an application under Section 319 of the Code for summoning the other accused persons to face trial, which has been rejected by the impugned order.

6. Learned Counsel for the petitioner, assailing the impugned order, has submitted that on the basis of evidence of witnesses adduced at the trial, it can be easily seen that commission of offences by other accused persons is also made out and in such circumstance, the Court below ought to have summoned them and tried them also, exercising power under Section 319 of the Code.

7. The language of Section 319 of the Code is clear



and it confers discretion upon the Court to proceed against a person not being an accused, if, in course of enquiry or trial, it appears that such person has committed any offence for which he or she could be tried together with other accused. The pre-condition for exercise of discretion under Section 319 of the Code is that the Court holding enquiry or trial must have the satisfaction that any person not being an accused has committed the offence for which he can be tried together with the accused persons put on trial. In the present case, the Court was not satisfied in this regard.

8. Secondly, only on the basis that certain materials cropped up during the trial against certain persons, it will not be obligatory for the Court to exercise power under Section 319 of the Code. Such discretion can be exercised after satisfaction having been reached, as noted above.

9. I do not find any illegality in the impugned order. This application has no merit and it is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
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