

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.927 of 2014

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1. Mozida Khatoon, wife of Md. Aslam, Resident of Village - Motgah, Police Station - Baheria, Distt. - Darbhanga.
2. Md. Aslam, Son of Late Md. Idris, Resident of Village - Motgah, Police Station - Baheria, Distt. - Darbhanga.
3. Abdul Salam, Son of Late Md. Idris, Resident of Village - Motgah, Police Station - Baheria, Distt. - Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar
2. Shabanam Zabi, wife of Md. Ekaram, D/o - Md. Jamil Ahmad, Resident of Village - Motgah, Police Station - Baheri, Distt. - Barbhanga., At Present daughter of Md. Jamil Ahamad, Resident of Village - Motgah, Police Station - Baheri, Distt. - Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioners : Mr. Girish Chandra Jha
For the State : Mr. Anant Kumar (App)
For O. P. No. 2 : Mr. Kedar Jha

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER**

5 07-03-2017 Heard learned Counsel for the petitioners and learned Counsel appearing on behalf of Opposite Party No. 2. Also heard learned Additional Public Prosecutor representing the State.

The petitioner is aggrieved an order, dated 11.09.2014, passed by learned Additional Sessions Judge I, Darbhanga, in Criminal Revision No. 280 of 2014, whereby he has set aside an order, dated 22.04.2014, passed by learned Sub Divisional Judicial Magistrate, Darbhanga. By



the said order, dated 22.04.2014, learned Sub Divisional Judicial Magistrate, Darbhanga, has dismissed an application filed by Opposite Party No. 2, under Section 319 of the Code of Criminal Procedure, 1973, for summoning the petitioners.

Learned Additional Sessions Judge I, Darbhanga, after having set aside the order, dated 22.04.2014, has remitted the matter back to learned Sub Divisional Judicial Magistrate, Darbhanga, to decide the matter afresh.

The facts are not in dispute. Respondent no. 2 is the complainant in C. R. No. 1779 of 2011, wherein she alleged commission of offences punishable under Sections 498A, 323, 379, 504 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

Learned Sub Divisional Judicial Magistrate, Darbhanga, took cognizance of the offence and decided to summon only two persons out of five named in the complaint petition as accused. The Opposite Party No. 2 thereafter, on the basis of evidence adduced in course of enquiry, filed an application under Section 319 of the Code of Criminal Procedure, 1973, seeking summoning of these petitioners also as accused. The application came to be rejected by order, dated 22.04.2014, by learned Sub



Divisional Judicial Magistrate, Darbhanga.

Against the said order, dated 22.04.2014, the respondent no. 2 filed revision application before the learned Sessions Judge, Darbhanga.

This is not in dispute that these petitioners were not impleaded as party in the criminal revision application. No notice was ever given to these petitioners in the said criminal revision proceeding in the Court of learned Additional Sessions Judge I, Darbhanga. By order, dated 11.09.2014, passed in Criminal Revision No. 280 of 2014, the said order, dated 22.04.2014, has been set aside.

The submission on behalf of the petitioners is that without giving them an opportunity of hearing and impleading them as parties to the criminal revision application, no order, adverse to their interest, could have been passed by the learned Revisional Court below. On this short ground, the impugned order is being assailed.

I find substance in submission made on behalf of the petitioners to this effect. The order, whereby the learned Court below had refused to summon these petitioners was favourable to these petitioners and the said order could not have been assailed behind their back. The order which was in their favour could not have been set aside without giving them an opportunity of hearing.



The impugned order, dated 11.09.2014, passed in Criminal Revision No. 280 of 2014, is hereby set aside. The matter is remanded back to the Court of learned Additional Sessions Judge I, Darbhanga, for the purpose of passing an order afresh, after giving the petitioners an opportunity of hearing.

This application is accordingly allowed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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