

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.25524 of 2015

Arising Out of PS.Case No. -840 Year- 2006 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

- =====
1. Vidya Nand Dubey, Son of Late Umakant Dubey.
 2. Sumit Kumar Dubey, Son of Vidya Nand Dubey.
 3. Vimla Devi, Wife of Vidyanand Dubey.
 4. Asmita Kumari daughter of Vidya Nand Dubey All resident of Mohalla-Beliroad Ramjaipal Nagar Barun Colony Gola Road Patna. P.S.-Danapur, Distt- Patna.
 5. Sachida Nand Dubey @ Lal Master Son of Late Umakant Dubey Resident of Simri Bakhtiyarpur Purani Bazar P.S. Simri Bakhtiyarpur, Distt- Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Amrita Devi wife of Amit Kumar Dubey resident of village-Simri Bakhtiyarpur, P.S. Simri Bakhtiyarpur, Distt. Saharsa at present D/O Kauslendra Kumar Pandey, resident of Mauza- Mahima P.S. Belsar, Dist. Vaishali.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nawal Kishor Prasad, Advocate
For the State : Mr. Zainul Abedin(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

2 25-04-2017 Heard learned counsel for the petitioners and the State.

The present application has been filed for quashing of the order dated 26.03.2007, passed by the learned SDJM, Vaishali at Hajipur in Complaint Case No.840 of 2006 whereby the process has been directed to be issued after cognizance being taken under Sections 498A and 379 of the Indian Penal Code and sections 3/4 of the Dowry Prohibition Act.



It is submitted by learned counsel for the petitioners that the complainant has not made her husband an accused and thus simply to ploy pressures on the petitioners for getting the property partitioned the present complaint has been filed.

Moreover, keeping in view of the fact that impugned order was passed on 26.03.2007 and the present application has been preferred on 28.05.2015 but there is nothing on record to suggest the present stage of the case, this Court is not inclined to interfere.

At the stage of exercising jurisdiction under section 190(1)(a) the Magistrate has only to see that accusation in complaint, S.A. of the complainant and the statement of enquiry witness constitute, prima facie, case. A useful reference may have to the case of **Sonu Gupta Vs. Deepak Gupta & Ors.** reported in **2015(2) PLJR (S.C.) 321** , paragraph no.7 reads as follows:-

"7. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and



summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.

The impugned order dated 26.03.2007 has been challenged in the present proceeding after eight years as the present quashing application got registered on 28.05.2015.

Accordingly the application is disposed of with a liberty to the petitioners to raise all the contentions at the appropriate stage of proceeding.

(Dinesh Kumar Singh, J)

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