

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42360 of 2014

Arising Out of PS.Case No. -381 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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Chandan Kumar Son of Late Anil Kumar Roy Resident of Mohalla - Naya Bazar,
P.S. Saharsa, Sadar, District - Saharsa

.... Petitioner/s

Versus

1. The State of Bihar
2. Swati Kumari @ Swati Chandan Wife of Chandan Kumar, Daughter of
Ramanand Prasad Resident of Kaima Shikoh, Patel House, P.S. Chowk, Patna
City, District - Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mrigendra Kumar, Advocate

For the Opposite Party/s : Mr. B.N. Pandey (APP)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date: 15-11-2017

This is an application under Section 482 of Cr.P.C.

for quashing the order taking cognizance dated 29.06.2012 under
Section 498(A) of I.P.C. and Section 3/4 of D.P. Act passed by
S.D.J.M., Patna City, Patna in Complaint Case No. 381 of 2012.

2. Briefly stated, the facts of the case is that the
complainant opposite party No. 2 Swati Kumari was married with
Chandan Kumar (petitioner) according to Hindu Rites and Customs
on 25.04.2008. It has been alleged that the petitioner along with other
in laws started assaulting and abusing the complainant opposite party
No. 2. Petitioner's parents kept her all ornaments and demanded a
house or Rs. 10 lakhs cash then they will allow the complainant



opposite party No. 2 to live with her husband.

3. The learned counsel for the petitioner states that after marriage the petitioner and his wife were living at Dhanbad where petitioner was posted. Petitioner came Patna from Dhanbad for treatment of his wife (complainant opposite party No. 2). The complainant opposite party No. 2 returned back to her parental home with all ornaments and clothes with her brother on 29.06.2008. The Complainant opposite party No. 2 came back to petitioner's house at Dhanbad with a condition that she will not live with the petitioner's parents. But the behaviour of complainant opposite party No. 2 was not good even with the petitioner and hence she returned back to her parental home at Patna with her brother on 30.08.2009, as she became pregnant. After birth of the child in Tripolia Hospital, Patna petitioner with his parents came there to see the child, where complaint's family started quarreling with petitioner and his parents. Petitioner and his parents tried to settle the dispute, but no positive response came from complainant opposite party and her parents.

4. At the time of hearing of Anticipatory Bail Petition the court below directed to restore the matrimonial relationship for one month vide its order dated 22.11.2012 and complainant opposite party No. 2 accompanied petitioner on 23.11.2012 but within a week complainant lodged a case at S.K. Puri P.S. Case No. 277 of 2012 on



29.11.2012 against the petitioner and his parents with allegation that they tried to kill opposite party No. 2 by sprinkling kerosene oil on her body. The petitioner at present is residing at his native house Saharsa and earning his livelihood by giving tuition and he is ready to keep complainant opposite party No. 2 with dignity and honour but she is not ready to live with the petitioner. The complainant opposite party was examined on S.A. and in support of her complaint case three inquiry witnesses were also examined by the court below and on the basis of complaint petition statement of complainant on S.A. and statement of three inquiry witnesses the court below found a prima facie case made out against the accused petitioner and took cognizance against the petitioner and issued summons for their appearance. Against this petitioner has filed this present petition. This Court has referred the matter to the Mediation Centre but in spite of endeavour made by the Mediator, the dispute between the parties could not be resolved and Mediation failed. At the time of taking cognizance the Trial Court has to form a prima facie opinion if any offence is made out against the accused person. The defence of the accused cannot be examined at that stage. The High Court in its inherent jurisdiction cannot substitute its view for the summons order issued by the Trial Court, as such I am not inclined to interfere in the order dated 29.06.2012 taking cognizance against the petitioner at this



stage, however, petitioner is at liberty to raise all the issues raised in this petition as well as all other issues available to him in law at the time of framing of charge if not already framed.

5. With the said liberty and observations, the present petition is disposed of.

(S. Kumar, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

