

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.16832 of 2014

Arising Out of PS.Case No. -174 Year- 2012 Thana -MUZAFFARPUR CITY District-
MUZAFFARPUR

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1. Sunil Kumar Sah @ Sunil Kumar
2. Anil Sah @ Anil Kumar Sah @ Anil Kumar
3. Deepak Kumar @ Deepak Kumar Sah
All are sons of late Chaturbhuj Sah, Resident of Village - Saraiyaganj, Nunphar,
Behind of Mega Bazar, P.S. - Muzaffarpur Town, Dist. - Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Tamanna Khatoon @ Sweta Devi, daughter of Md.Alam, r/o village Sadatpur
Kanti, P.S. Kanti, Distt. Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Udit Narayan Singh, Advocate.
Mr. Gajendra Kumar Singh, Advocate.
For the Opposite Party/s : Mr. Shyam Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 14-07-2017

1. The petitioner has challenged the order of cognizance dated 6.3.2014 passed by the learned Chief Judicial Magistrate, Muzaffarpur, by which the learned Magistrate took cognizance against the petitioners in connection with Muzaffarpur Town P.S. Case No. 174 of 2012 for the offence under Sections 341, 323 and 498A/34 of the Indian Penal Code.

2. The informant has alleged that she was living with petitioner No. 1 as husband and wife for the last three years and from their wedlock, one girl child was born. Thereafter, the petitioner No. 1



wanted to dissolve the relationship with her and performed another marriage. Thereafter, the petitioner No. 1 along with his other brother Anil Sah and Deepak Kumar assaulted the informant and forcibly ousted her from matrimonial home.

3. From the impugned order, it appears that police after investigation found the case true and filed charge sheet against all the petitioners. The learned Magistrate has on the basis of allegation in the First Information Report and materials available in the case diary, found sufficient material to take cognizance against the petitioner for the offence under Sections 341, 323 and 498A/34 of the Indian Penal Code.

4. The counsel for the petitioner has submitted that wife (informant) was live in relationship. She has been married with another person which is apparent from Annexure-2.

5. It is settled law that learned Magistrate is not required to see the defence of the petitioners at the time of taking cognizance. The cognizance can be taken even if *prima facie* case is made out against the accused persons.

6. In the instant case, the police after investigation has found the case true and filed charge sheet against the petitioners. Thereafter, the cognizance has been taken by the learned Magistrate on the basis of allegation in the written report and the materials



available in the case diary.

7. Therefore, this Court is not inclined to interfere in the order of cognizance.

8. This Criminal Miscellaneous application is accordingly dismissed.

9. The petitioner is given liberty to raise all the points as raised in this Criminal Miscellaneous application at the time of framing of charge in the court below which shall be disposed off by the court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
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