

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.30315 of 2016**

Arising Out of PS.Case No. -169 Year- 2012 Thana -SURYAGARHA District- LAKHISARAI

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Nishikant Saw son of Mathura Saw, resident of village- Nirpur Jakarpura Teen  
Muhani, P.S.- Surajgarha, District - Lakhisarai.

.... .... Petitioner/s

**Versus**

1. The State of Bihar.
2. Soni Devi wife of Uday Shankar, resident of village- Naya Tola, Jakarpura, P.S.-  
Surajgarha, District- Lakhisarai.

.... .... Opposite Party/s

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**Appearance :**

|                      |   |                                  |
|----------------------|---|----------------------------------|
| For the Petitioner/s | : | Mr. Pankaj Kumar Sinha, Advocate |
|                      | : | Mr. Rabi Bhushan, Advocate       |
| For the Informant    | : | Mr. Rakhi Kumari, Advocate       |
| For the State        | : | Mr. Binod Kumar, APP             |

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 29-08-2017**

Heard learned counsel for the petitioner and learned counsel  
for the State.

2. By way of the present application preferred under  
Section 482 of the Code of Criminal Procedure (for short 'the CrPC')  
the petitioner seeks quashing of the order dated 10.04.2014 passed in  
Surajgarha P.S. Case No.169 of 2012 whereby the Chief Judicial



Magistrate, Lakhisarai took cognizance of the offences punishable under Section 304B of the Indian Penal Code (for short 'the IPC') and Sections 3 and 4 of the Dowry Prohibition Act.

3. In the first information report the informant has alleged that her daughter Rani Kumari, who was married to co-accused Shuklakant Saw, the brother of petitioner was set on fire after pouring kerosene oil on her person. It is further alleged that death of the victim took place due to severe burn injuries caused within five years of marriage. It is also alleged that the victim was being subjected to cruelty in various ways by the husband and his relatives including the petitioner for non-fulfillment of demand of dowry.

4. The case was investigated upon by the police and, on completion of investigation, the police found the allegations made in the FIR to be true. Accordingly, charge-sheet was submitted in the court of Chief Judicial Magistrate, Lakhisarai.

5. On perusal of the FIR, statement of the witnesses recorded under Section 161(3) of the CrPC and substance of accusation recorded in the police report submitted under Section 173(2) of the CrPC, the learned Chief Judicial Magistrate took cognizance of the offence against the petitioner, vide order dated 10.04.2014, which is under challenge in the present application.



6. Mr. Pankaj Kumar Sinha, learned counsel for the petitioner has submitted that initially other accused persons were sent up for trial and the investigation of the petitioner was kept pending and subsequently a supplementary charge-sheet was submitted against him, but in the meantime, the other accused persons were put on trial. He has submitted that the witnesses examined in course of trial in respect of other accused persons have not supported the prosecution case as alleged in the FIR. Hence, the impugned order taking cognizance of the offence against the petitioner be quashed for the ends of justice.

7. The submission made by the learned counsel for the petitioner cannot be accepted.

8. The petitioner has not faced trial till date. The deposition of the witnesses recorded in separate trial would be of no consequence as far as the trial of the petitioner is concerned. At the stage of cognizance, the Magistrate is supposed to look into the allegations made in the FIR, the materials collected during investigation and the police report submitted under Section 173(2) of the CrPC. He can not take notice of any other material.

9. Having considered the materials available on record, if learned Magistrate has found a prima facie case against the petitioner



and has taken cognizance under Section 304B of the IPC as well as Sections 3 and 4 of the Dowry Prohibition Act, no illegality can be found with the order.

**10.** Accordingly, the application, being devoid of any merit, is dismissed.

**(Ashwani Kumar Singh, J)**

Md.S./-

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