

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.25083 of 2012

Arising Out of PS. Case No.-121 Year-2007 Thana- Agamkuan District- Patna

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1. Lal Babu Choudhary , S/o Late Chamari Lal
 2. Uma Devi, W/o Lalbabu Choudhary
 3. Raj Kumar @ Pappu, S/o Lalbabu Choudhary
 4. Sunil Prabhakar @ Shyam Babu , S/o Late Chamari Lal
 5. Reeta Devi, W/o Shyam Babu
All are Residents Of Mo. Kali Mandir Hanuman Nagar, P.S.-
Patrakar Nagar, Dist.- Patna
 6. Manoj Kumar , S/o Sripat, Resident and P.S.- Hilsa, Dist.-
Nalanda

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Pummy Devi, D/o Mathura Prasad Jaiswal, Resident Of Digha Ghat,
P.S.- Digha, Dist.- Patna A/p Kumhrar Daud Bigha, P.S.- Agamkuan,
Dist.- Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Smt. Mira Kumari

For the Opposite Party/s : Mr. Abhay Kumar Roy (APP)

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date : 11-09-2017

Heard Smt. Mira Kumari, learned counsel for the petitioners
and Sri Abhay Kumar Roy, learned Additional Public Prosecutor.

The petitioner no. 3 /husband of the informant -opposite
party no. 2 along with his other five family members have
approached this court invoking its inherent jurisdiction under
section 482 of the Code of Criminal Procedure , 1973 (hereinafter
referred to as Cr.P.C.”) with a prayer to quash an order which
was passed on 24.1.2012 in Gr. No. 1380 of 2007 [arising out of



Agamkuan P.S. Case No. 121 of 2007) registered for offence under section 498A/ 494/34 of the Indian Penal Code 1860 (hereinafter referred to as “IPC”) by learned Sub Divisional Judicial Magistrate, Patna City (hereinafter referred to as “Magistrate”) . By the said order the learned Magistrate has rejected the petition filed on behalf of the petitioners under section 239 of the Cr.P.C. for their discharge.

Learned counsel for the petitioners assailing the order impugned submits that prosecution has been initiated against all the the petitioners maliciously. It has been argued that earlier a police case was instituted against opposite party no. 2 and others for committing offence under section 304B of the IPC and this was the reason that informant subsequently has filed the present case. It has been argued that even distant relatives such as petitioner no. 6 /nandosi of opposite party no. 2 has been been arrayed as accused. Accordingly, on the ground that prosecution being malicious, a prayer has been made to quash the order impugned and discharge the petitioners.

Learned Additional Public Prosecutor opposing the prayer submits that in the FIR itself there was specific accusation against the accused persons besides allegation of torturing. It was alleged that during continuance of marriage of petitioner no. 3 with



informant /opposite party no. 2 marriage of petitioner no. 3 was solemnized with some one else and as such besides offence under section 498A offence under section 494 /34 of the IPC was made out in the FIR. According to learned Additional Public Prosecutor during investigation accusation were found true , and as such , all the petitioners were charge -sheeted and at the stage of charge, discharge petition was filed, which has been rejected by the learned Magistrate assigning detailed reason. It has also been argued that the fact that informant was made accused in Patrakar Nagar P.S. Case No. 390 of 2006 registered for offence under section 304B / 120B/ 201 / 34 of the IPC, but during investigation accusation was found not -true and as such, final report was submitted by the Police which has been noticed by the learned Magistrate while passing order on discharge petition. According to learned state counsel earlier in this case, case diary was called for which has been received and in case diary also there are sufficient materials to proceed with the petitioners.

Besides hearing learned counsel for the parties I have perused the materials available on record. So far allegation of malice by the petitioners is concerned , once the so- called FIR which was lodged against the informant /opposite party no. 2 during investigation was found not true the very ground of malice



automatically disappears. Otherwise also order of the learned Magistrate whereby discharge petition was rejected gives detail reason for rejection of the same . I do not find any error in the order warranting interference. Accordingly, the petition stands dismissed.

(Rakesh Kumar, J)

praful/-

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