

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.31846 of 2016

Arising Out of PS.Case No. -1773 Year- 2013 Thana -SAHARSA COMPLAINT CASE District-
SAHARSA

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Banti Kumar Jha Son of Babu Sahab Jha Resident of Village- Bangaon, PS
Bangaon, District Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar
2. Saraswati Devi W/o Bijay Jha Resident of Village- Bangaon, PS
Bangaon, District Saharsa.
3. Khushbu Devi D/o Bijay Jha, Resident of village – Bangaon, P.S.
Bangaon, District – Saharsa.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pawan Kumar

For the Opposite Party/s : Mr. Sri Rajeev Nayan

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

ORAL ORDER

05/ 20-02-2017

Heard learned counsels for the petitioner and the
State.

The petitioner is alleged to be the husband of the
daughter of the complainant is apprehending his arrest in a
complaint case wherein process has been directed to be issued
after cognizance being taken for the offences punishable under
Sections 498A of the Indian Penal Code and 3/4 of the Dowry
Prohibition Act.

The basic accusation is of torture for non-
fulfillment of the dowry demand.

It is submitted by learned counsel for the



petitioner that the petitioner denies the factum of marriage with the daughter of the complainant. Initially a complaint was filed and a report was called for by the learned S.D.J.M., Saharsa from the Probation Officer, who submitted the report to the effect that the petitioner was never married with the victim Khushbu Devi and due to the litigated terms between the parties the accusation has been levelled. Subsequently vide order dated 01.05.2015 the learned SDJM, Saharsa took cognizance only for the offences punishable under Sections 323 and 504 of the IPC. The said order of cognizance was assailed in the criminal revision and consequently in pursuance to the revisional order cognizance was taken under Sections 498A of the Indian Penal Code and 3/4 of the Dowry Prohibition Act. Hence, in the circumstances, the offences under Sections 498A of the IPC and 3/4 of the Dowry Prohibition Act are not made out against the petitioner since there is nothing on the record to suggest that the marriage between the petitioner and the daughter of the complainant was performed.

On submission of learned counsel for the petitioner disputing the factum of marriage, notices were issued to the complainant and her daughter, O.P. Nos. 2 and 3, vide order dated 29.07.2016. The office note dated 09.11.2016 reflects that opposite party no. 3 has received the ordinary process of notice on



her behalf and on behalf of opposite party no. 2, consequently an affidavit was filed on behalf of the petitioner with regard to the jointness of opposite party nos. 2 and 3. Hence, the notices issued to opposite party nos. 2 and 3 are treated to be deemed valid service. Till date opposite party nos. 2 and 3 chose not to appear to controvert the contention of the petitioner.

In view of the fact that the factum of marriage has been disputed by the petitioner and the complainant and her daughter chose not to appear to controvert the same, let the above named petitioner be released on anticipatory bail, in the event of his arrest or surrender before the learned court below within a period of twelve weeks from today, on furnishing bail bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned Sub-divisional Judicial Magistrate, Saharsa in connection with Complaint Case No. 1773C of 2013, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Dinesh Kumar Singh, J)

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