

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37259 of 2016

Arising Out of PS.Case No. -1282 Year- 2010 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

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1. Dev Sunder Devi wife of Late Chandeshwar Singh

2. Dhananjay Singh @ Dhananjay Kumar Singh son of Late Chandeshwar Singh Both resident of village and P.O.- Piyaniya, P.S.- Udwant Nagar, Dist.- Bhojpur (Ara)

.... Petitioner/s

Versus

1. The State of Bihar

2. Saroj Kumari wife of Ajay Singh, daughter of Mr. Keshav Singh resident of village and P.O.- Piyaniya, P.S.- Udwant Nagar, Dist.- Bhojpur, presently resident of Veer Kuwar Singh Colony, P.O.- Hajipur Nagar, Dist.- Vaishali (Hajipur)

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sumeet Kumar Singh, Adv
For the State : Mr. J.N. Thakur, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 19-04-2017 Heard learned counsel for the petitioners and Mr. J.N. Thakur, learned APP for the State.

The present application has been filed for quashing the order dated 27.01.2011 passed by learned S.D.J.M., Hajipur in Complaint Case No. 1282 of 2010, whereby process has been issued after taking cognizance of the offence punishable under Section 498A of the Indian Penal Code and Section 4 of the



Dowry Prohibition Act.

Learned counsel for the petitioner submits that petitioner is the mother of the husband of the complainant whereas the thrust of accusation is against the husband of the complainant.

Considering the fact that at the stage of exercise of jurisdiction under Section 190(1)(a) of the Code of Criminal Procedure, the court has to only see that accusation constitutes prima facie case as has been held by the Apex Court in the case of **Sonu Gupta Vs. Deepak Gupta & Ors.** reported in **2015(2) PLJR (S.C.) 321** , relevant portion whereof reads as follows:-

"7. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the



defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.

8. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of the charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with



law so that case of both the sides may be considered appropriately on conclusion of trial."

In view of the above settled legal proposition, this Court is not inclined to interfere and above all the impugned order was passed on 27.01.2011, but there is nothing on record to suggest the present stage of the case.

In that view of the above fact, this application is disposed of with liberty to the petitioners to raise all the contentions at the appropriate stage.

(Dinesh Kumar Singh, J)

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