

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

**Criminal Miscellaneous No.15870 of 2014**

Arising Out of PS.Case No. -76 Year- 2005 Thana -BRAHMPURA District- MUZAFFARPUR

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1. Sureshwar Narayan Son Of Late Kuldeo Narayn  
2. Sunaina Devi @ Sunaina Narayan Wie Of Sureshwar Narayan Both Resident Of  
Laxmi Chowk, P.S.- Brahampur, District - Muzaffapur

.... .... Petitioner/s

Versus

1. The State Of Bihar  
2. Mukta Rasmi Daughter Of Birendra Kumar Srivastava Resident Of Baria Bus  
Stand, P.S.- Ahiyarpur, District - Muzaffapur

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

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**Appearance :**

For the Petitioner/s : Mr. Sunil Kumar Karn, Advocate  
For the Opposite Party/s : Mr. Surendra Kumar, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA**  
**CAV JUDGMENT**

**Dated: 22-09-2017**

Heard learned counsel for the parties.

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing of order dated 17.09.2012 passed by the learned Judicial Magistrate, Muzaffarpur arising out of Brahmpura P.S. Case No. 76 of 2005, whereby the learned court below took cognizance against the petitioners under Sections 498A of the Indian Penal Code and Section 3/4 of the D.P. Act.

The brief facts of this case are that the petitioners the marriage of the informant was solemnized with one Rakesh Narayan in the year 2000 according to Hindu Rites and Rituals in which several gifts and Rs. 10 lacs have been given to petitioners' family but the petitioners refused to bring the informant to her matrimonial house on account of non fulfillment of demand of extra dowry worth Rs. 2 lacs and one Alto Car. Somehow the informant manage to go to her matrimonial home and thereafter she was subjected to cruelty and torture and the petitioners also used to give threat of life and



resultantly, on account on non fulfillment of demand of dowry she was ousted from her matrimonial house.

Learned counsel for the petitioners has submitted that petitioners has not committed any offence as alleged in the F.I.R.. In fact, the petitioners happen to be brother-in-law and sister-in-law of the informant and they have no concern with the alleged occurrence. As a matter of fact, there was family dispute between the petitioners and the informant for partition of land for which the husband of the informant has also filed a Partition Suit No. 320 of 2005 and the same was dropped on account of compromise between them, which is evident from annexure-3. The petitioners have never made any demand of dowry or even assaulted the informant in any manner rather they have falsely been implicated in this case only to harass the petitioners and to grab their earned property. However, the learned Magistrate without considering the aforesaid facts has erroneously taken cognizance under Section 498A of the Indian Penal Code and Section 3/4 of the D.P. Act against the petitioners. Therefore, the order taking cognizance deserves to be quashed.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioners and the court below after going through the materials available on record has found a prima facie case made out against the petitioner and rightly taken cognizance for offence under Sections 498A of the Indian Penal Code and Section 3/4 of the D.P. Act. Therefore, the order taking cognizance does not requires any interference.

From perusal of the material on record and looking into the facts of the case at this stage, it cannot be said that no offence is made out against the petitioner. All the submissions made at Bar relates to disputed question of fact, which cannot be adjudicated upon by this Court in exercise of power conferred under Section 482



Cr.P.C. Only a prima facie satisfaction of the Court about the existence ground to proceed with the matter is required. At this stage, only prima facie case is to be seen in the light of the law laid down by the Supreme Court in cases of *R.P. Kapur Vs. State of Punjab*, A.I.R. 1960 SC 866, *State of Haryana Vs. Bhajan Lal*, 1992 SCC (Cr.) 426, *State of Bihar Vs. P.P. Sharma*, 1992 SCC (Cr.) 192, *Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10)* 2005 SCC (Cr.) 283 and recently in *A.R.C.I. Vs. Nimra Cerglass Technics (P) Ltd. (2016) 1 SCC 348*. The submission made by the learned for the petitioner call for adjudication on pure question of fact which may be adequately gone into by the trial court in this case. This Court does not deem it proper, and therefore, cannot be persuaded to have a pre-trial before the actual trial begins. The disputed defense of the accused cannot be considered at this stage. Moreover, the petitioner has got a right of discharge through a proper application for the said purpose and he is free to take all the submission in the said discharge application before the trial court. The prayer for quashing the order taking cognizance is refused.

The application accordingly stands dismissed.

(Arvind Srivastava, J)

Brajesh/-

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