

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34070 of 2013

Arising Out of PS.Case No. -88 Year- 2008 Thana -MATIHANI District- BEGUSARAI

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Kalpana Devi @ Kalpana Kumari W/O Sri Om Prakash Singh @ Paltan
Resident Of Village- Sihma, P.S.- Matihani, District- Begusarai

.... Petitioner.

Versus

1. The State Of Bihar
2. Ram Chandra Rai S/O Yamuna Rai Resident Of Village- Shasan, P.S.-
Hasanpur, Distt.- Samastipur

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Manoj Kumar Singh, Advocate

For the Opposite Parties : Mr. Gajendra Pd.Yadav (APP)

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN
SHARMA**
ORAL ORDER

5 18-04-2017 This Criminal Miscellaneous has been filed for

quashing the order dated 22.05.2013 passed by the Additional

Sessions Judge-Vth, Begusarai in Sessions Trial No. 381 of 2011

arising out of Matihani P.S. Case No. 88 of 2008, whereby and

whereunder, the discharge petition filed by the petitioner was

rejected.

Heard the learned counsel for the petitioner and the

learned A.P.P. for the State.

The petitioner is alleged to be the mother-in-law of

the deceased and accordingly she has been made accused in

Matihani P.S. Case No. 88 of 2008 registered for the offences

under sections 498 A, 304 B and 201/34 of the I.P.C.



Submission on behalf of the petitioner is that the petitioner is not the mother-in-law of the deceased. She is not the family member of the deceased so she could not be made accused in this case. During investigation the fact of relationship of this petitioner with the deceased was not examined and the police submitted charge sheet against the petitioner without considering the materials collected during investigation. The Chaukidar has been examined and he has not supported the prosecution version. Further, other independent witnesses have also not supported the prosecution version and as such the discharge petition was fit to be allowed which has been wrongly rejected by the learned trial Judge. It is also submitted that in the entire case diary there is no material against the petitioner to show that the petitioner is the mother-in-law of the deceased.

The learned A.P.P, on the other hand, submits that the investigation was done properly on the basis of the material available and the charge sheet has been submitted against the petitioner also. In the case diary there is sufficient material against the petitioner also to frame charges.

The informant has alleged that the petitioner is having illicit relationship with the father-in-law and so she has been arrayed as mother-in-law in the case. Further, against her also



there is allegation for demanding dowry by way of motorcycle, gold chain and cash of Rs. 10,000/-. The petitioner and others have killed Guria Kumari and made the dead body traceless.

Having considered the submissions of the parties, it is manifest that the charge sheet has been submitted against the petitioner also. In the case diary there is sufficient material as is noted by the learned Additional Sessions Judge- Vth, Begusarai. The learned Additional Sessions Judge, Vth, Begusarai has found that there is sufficient material to frame the charge against this accused and then has rejected the petition dated 05.07.2011 filed by the petitioner. The defence of the accused cannot be adjudged at the stage of framing charge. Whether the petitioner is the family member of the deceased or not can very well be adjudged at the trial and not at this stage. No doubt, the petitioner was given liberty to raise all her contentions available in law at the time of framing charge and it is well settled principle of law that at the time of framing charge the defence of the accused cannot be looked into. At this stage only thing required is to see as to whether in the case diary there is sufficient material to proceed further against the accused or not by framing charge and the learned trial Judge after considering all these facts has rejected the petition dated 05.07.2011 filed by the petitioner.



In the result, finding no merit in this Criminal
Miscellaneous, the same is hereby dismissed.

(Jitendra Mohan Sharma, J)

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