

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.53719 of 2013

Arising Out of PS.Case No. -208 Year- 2011 Thana -KUDHNI District- MUZAFFARPUR

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1. Rajnish Kumar Son Of Ramesh Singh Resident Of Village - Balaur, P.S. Kurhani, District - Muzaffarpur
 2. Ramesh Singh Son Of Late Hanslal Singh Resident Of Village - Balaur, P.S. Kurhani, District - Muzaffarpur
 3. Meena Devi Wife Of Ramesh Singh Resident Of Village - Balaur, P.S. Kurhani, District - Muzaffarpur
 4. Rakesh Kumar Son Of Rameswar Singh Resident Of Village - Thatiyan, P.O. Balaur, P.S. Kurhani, District - Muzaffarpur
 5. Kanchan Mala Wife Of Rakesh Kumar Resident Of Village - Thatiyan, P.O. Balaur, P.S. Kurhani, District - Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. Rinku Singh Wife Of Shiv Ranjan Kumar, D/O Sri Suresh Singh Resident Of Village - Kabia, P.O. Azizpur, P.S. Kurhani, District - Muzaffarpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Neeraj Kumr @ Sanidh
For the Opposite Party/s : Mr. Khurshid Anwar

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

Date: 01-08-2017

Heard learned counsel for the parties.

Petitioners, by means of this application under section 482 of the Code of Criminal Procedure, have invoked the inherent jurisdiction of this Court with prayer to quash the order dated



30.09.2013, passed by Sub-Divisional Judicial Magistrate, West, Muzaffarpur, in Kurhani P.S. Case No. 208 of 2011, whereby cognizance has been taken against the petitioners for the offence under sections 498A/34 of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act.

The contention of the learned counsel for the petitioners is that no offence against the petitioners is disclosed and the present prosecution has been instituted with mala fide intention for the purposes of harassment. The occurrence is alleged to have taken place on 05.02.2010 whereas the present first information report has been lodged on 22.08.2011. There is delay of about six month, but there is no explanation for the delay. Learned counsel, in support of his argument for quashing the order taking cognizance, has placed reliance on the judgments of the Hon'ble Supreme Court and the Orissa High Court reported in ***A.I.R. 2010 SC 3363, A.I.R. 1992 SC 604 and 2003 Cr. L.J.3772.***

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioners and no ground for quashing the entire proceedings is made out.

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 petitioners. All the submissions made at bar relates to the disputed questions 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 of sufficient ground to proceeding in the matter is required. At this stage only prima facie case is to be seen in the light of the law laid down by 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 submissions made by the learned counsel for the petitioners call for adjudication on pure questions 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 defence of the accused cannot be considered at this stage. The judgments of the Hon'ble Supreme Court and the Orissa High Court, cited above, are on different set of facts and the same is not applicable in the facts and circumstances of the present case. Further, the petitioners have got a right of discharge through a proper application for the said purpose and he is free to



take all the submissions 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)

Manish/-

AFR/NAFR	NAFR
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