

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48044 of 2013

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1. Nawal Sharma Son of Late Yadubir Singh
 2. Urmila Devi Wife of Nawal Sharma
Resident of East Lohanipur, Pustkalaya Lane, Kadam Kuan, P.S. Kadam Kuan, Distt.- Patna
 3. Rozi Devi @ Rozi Kumar @ Rajo Devi Wife of Santosh Sharma
 4. Santosh Sharma @ Santosh Kumar Son of Shambhu Singh
Both Resident of East Lohanipur, Pustkalaya Lane, Kadam Kuan, P.S. Kadam Kuan, Distt.- Patna. Presently Residing At Ashok Nagar Road No. 8, P.S. Kankarbagh, Dist. Patna
 5. Nikki Kumar @ Nikki Tasha, Daughter of Onkar Sharma @ Onkar Nath Sharma Wife of Barun Kumar, Resident of East Lohanipur, Pustkalaya Lane, Kadam Kuan, P.S. Kadam Kuan, Distt.- Patna, Presently residing at Village Maghra, P.S. Biharsharif, Distt. Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar
2. Suman Devi Wife of Onkar Sharma Daughter of Kedar Singh Resident of Village- Babhangama, P.S.- Lakhisarai, District- Lakhisarai

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ansul, Advocate. Mr. Uma Shankar Sharma, Advocate.
For the State	:	Mr. Navin Kumar Pandey, A.P.P.
For the OP No. 2	:	Mr. S.M.Shabbir Alam, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 01-11-2017

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the O.P. No. 2.

2. Petitioners, by filing this application, under Section 482 of the Code of Criminal Procedure, 1973, seeks quashing of cognizance order dated 20.02.2013 passed by the Chief Judicial Magistrate, Lakhisarai in Mahila P.S. Case No. 26 of 2012 thereby taking cognizance of offence under Sections 498A and 406/34 of the



Indian Penal Code differing with final report submitted by Police finding dispute civil in nature so not sent up the accused for trial.

3. A short fact giving rise to the case is that initially a complaint was filed by the informant, later on sent to the police under Section 156(3) of the Cr.P.C. for institution of the FIR accordingly police case was registered. The fact alleged in the complaint is that complainant's marriage was solemnized with Onkar Sharma, son of the petitioners no. 1 and 2, on 28th April 1999, in a temple. After marriage, accused persons started making demand of dowry when she started residing in matrimonial home. Due to harassment and cruelty committed by the petitioners, she used to leave matrimonial home and used to return back after some persuasion. While she was living at her parent's home, her husband visited there and reiterated demand of dowry. Ultimately, on 20.08.2012, she was kicked out from her matrimonial home. Police, after institution of the FIR, completed investigation and submitted final report finding the dispute civil in nature consequently case of under Section 498A was not found true.

4. Learned counsel for the petitioners assails the impugned order of taking cognizance on the ground that in a mechanical way, the impugned order was passed, no reference of any evidence against the petitioners is mentioned in the impugned order showing their *prima facie* involvement in the offence. In view of



settled proposition of law, learned Magistrate requires to mention the material available in the case diary, in particular, while differing with the opinion of the police. In support of his case, learned counsel placed reliance on several decisions, *M/s Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.* reported in *AIR 1998 SC 128*; of *Kailash Chaudhary vs. State of U.P.* reported in *1994 Cri. L.J. 66* (para 11 and 12) and on other unreported judgments passed by a Co-ordinate Bench of this Court in case of *Kaushlendra Narayan @ Lalan and Anr. vs. The State of Bihar & Ors.* passed in Cr. Misc. No. 41409 of 2008 dated 03.08.2010; *Anand Kumar Khatri vs. The State of Bihar* passed in Cr. Misc. No. 5979 of 2004 dated 18.09.2014 and *Shiv Nandan Keshari and Ors. vs. The State of Bihar* passed in Cr. Misc. No. 14941 of 2007 dated 20.08.2009. Learned counsel further submits that petitioners no. 1 and 2 are parents of the husband of the informant and petitioner no. 2, mother-in-law of the informant, is dead and petitioners no. 3 and 4 are married Nanad and her husband and petitioner no. 5 is the step daughter of the informant, who is also married and they all are living separately at distant places. He further submits that it was the second marriage of the informant solemnized in a temple, so there is no question of making any demand of further dowry.

5. Contrary to that, learned counsel appearing on behalf



of the O.P. No. 2 submits that there is sufficient materials in the case diary to take cognizance of offence, however, he concedes that there is no such reference in the impugned order.

6. Having considered the rival submissions of the parties and on perusal of record, the Court finds that it is settled principle of law that a court may differ with the final report submitted by the police after investigation but the impugned order taking cognizance while differing with the police report must reflect the application of mind that a Magistrate looked over the materials or evidence collected during investigation indicating the same showing *prima facie* involvement of the accused persons in the alleged offence. The Apex Court in the Case of M/s ***Pepsi Foods Ltd.*** (supra) has observed as follows:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of



the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused”.

7. The Court, having considered the material on record, finds that the impugned order passed by the Chief Judicial Magistrate, Lakhisarai, does not reflect any application of judicial mind to reason out what transpired him to differ with the opinion of the Investigating Officer filing final form in the case. Cognizance order requires to reflect the evidence collected during investigation showing *prima facie* involvement of the accused persons in the alleged offence but there is complete absence of such material in the impugned order. Hence, order taking cognizance dated 20.02.2013 passed by the Chief Judicial Magistrate, Lakhisarai in Mahila P.S.Case No. 26 of 2012 is set aside. However, this order shall not preclude the court below to pass a fresh order in accordance with law.

The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	NA
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