

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12563 of 2012

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SUNIL KUMAR PURBEY, S/O SRI HARI NARAIN PURBEY, R/O
MOHALLA - LAXMIPUR, WARD NO. 16, POLICE STATION - ROSERA,
DISTRICT - SAMASTIPUR

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. SUNAINA DEVI D/O LATE DEV NARAYAN PASWAN R/O VILLAGE -
KHOKSAHA, P.S. BIBHUTIPUR, DISTRICT - SAMASTIPUR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jagdhar Prasad
For the Opposite Party/s : Mr. Jharkhandi Upadhyay (APP)

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
CAV JUDGMENT

Date : 04-04-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

Petitioner, by means of this application under section
482 of the Cr. P.C., has invoked the inherent jurisdiction of this
Court with prayer to quash the order dated 19.10.2011 passed by
the learned S.D.J.M., Rosera, District – Samastipur in Complaint
Case No. 1073 of 2010, including the entire criminal prosecution,
whereby and whereunder the learned Court below has taken
cognizance against the petitioner for the offence under sections
323 and 498(A) of the Indian Penal Code and section 4 of the
Dowry Prohibition Act as also under section 494 of the Indian



Penal Code and ordered to issue process against all the accused persons, including the petitioner.

The case of the complainant, in brief, is that after marriage, she went to her matrimonial house, where all the accused persons, including the petitioner used to demand motorcycle, T.V. and one lakh cash. The parents of the complainant could not fulfill the said demand. Thereafter, the accused persons including the petitioner assaulted her and started torturing her in various ways. Further the accused persons snatched her ornaments, cloths and furnitures and ousted her. It is further alleged that the petitioner has solemnized second marriage with one Khushboo Devi.

Submission of learned counsel for the petitioner is that the present prosecution has been instituted with *mala fide* intention for the purposes of harassment. As a matter of fact, the complainant had never married with this petitioner, rather she married with one Rajesh Paswan and from the said wedlock, she has three children, as detailed in Annexure-2 series. The complainant Sunaina Devi is living at her Sasural along with children. Her name is still existing in the voter list, which would appear from the Annexure-3. Further submission is that the complainant was the candidate of Mukhia and she had given her



address being the wife of Late Rajesh Paswan (Annexure-4). It is also submitted that the complainant had herself remarried with one Randhir Paswan, which would evident from Annexure-5. Learned counsel further contends that the complainant had filed Marriage Receipt (Annexure-6), on that basis cognizance has been taken in the case. The said marriage receipt is forged and fabricated. It is also submitted that on perusal of Annexures-7 and 7/1, it appears that the complainant had never married with this petitioner.

Learned counsel appearing on behalf of the State opposes the application by contending that there are allegations against the petitioner and no ground for quashing the entire proceedings is made out. However, no one appears on behalf of the complainant/opposite party no. 2 even after issuance of notice.

From perusal of materials 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 the disputed question of facts and defence, which cannot be adjudicated upon by this Court in exercise of power conferred under section 482 of the Cr. P.C. Only a *prima facie* satisfaction of the Court about the existence of sufficient ground to proceed in the matter is required. 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 submissions in the said discharge application before the Trial Court. The prayer for quashing the order taking cognizance is refused.

Accordingly, the application stands dismissed.

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
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