

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32896 of 2018

Arising Out of PS.Case No. -25 Year- 2013 Thana -MAHILA PS District- BUXAR

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Banti Kumar Jaiswal @ Banti Jaiswal S/o Laxman Jaiswal, R/o Vill.-
Piparpati Road, P.S.- Town, District- Buxar.

.... Petitioner

Versus

1. The State of Bihar.
2. Sahnaj Praveen W/o Banti Jaiswal, R/o Civil Line, P.S.- Town, District-
Buxar.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Abhishek Kumar

For the Opposite Party/s : Mr. Zainul Abedin

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2. 09-10-2018

Petitioner in the present case is husband who is facing prosecution for the offences alleged under Sections 493/498A/34 of the Indian Penal Code in connection with Mahila P.S. Case No. 25 of 2013 pending in the court of learned Sub-Divisional Judicial Magistrate, Buxar.

By the impugned order dated 09.03.2018 the learned Sub-Divisional Judicial Magistrate, Buxar has been pleased to dismiss the application of the petitioner under Section 239 Cr.P.C.

It appears on perusal of the impugned order that there are allegations against this petitioner and in course of investigation materials have been collected suggesting presence of ingredients of the offences alleged. The learned



S.D.J.M. has considered the materials available on the record and came to the conclusion that there are prima facie evidence to frame charge against the petitioner.

Learned counsel for the petitioner at this stage submits that in fact the very marriage between the petitioner and the informant is in doubt and for that reason only the petitioner had filed the application seeking help of Section 221 of the Cr.P.C.

Learned counsel for the State has opposed the prayer of the petitioner and submits that the question whether the informant is wife of the petitioner or not would be a question of fact and such question will be decided only when the materials come in course of trial.

Having heard learned counsel for the parties, and on perusal of the record, this court is of the considered opinion that at this stage the petition brought by the petitioner has been rightly rejected by the learned court below.

It is however made clear that in course of trial if the evidences come giving an opportunity to the petitioner to take a plea as to the factum of marriage, he may avail the remedy raising such questions which may be available to him in course of trial on the basis of the materials before the trial



court.

Needless to say that there are provisions under the Code of Criminal Procedure whereunder even the charge may be altered or modified at any stage of the trial, all such questions shall remain for the petitioner.

This application shall stand disposed off, accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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