

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51683 of 2014

Arising Out of PS. Case No.-29 Year-2003 Thana- ASAWAN District- Siwan

-
1. Dharmendra Dubey son of Mohal Lal Dubey
 2. Mohan Lal Dubey son of Late Bharat Dubey
 3. Divakar Dubey son of Mohan Lal Dubey
 4. Jitendra Dubey son of Mohan Lal Dubey All Resident of village-
Assawan, P.S. Assawan, District Siwan

... .. Petitioner/s

Versus

1. The State of Bihar
2. Prabha Devi, wife of Dharmendra Dubey, resident of village Assawan, P.S. Assawan, District Siwan at present village Khap Dhanauti, P.O. and Police Station Raghunathpur, District Siwan

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjeet Kumar Tiwari
For the Opposite Party/s : Mr. Navin Kr. Pandey(App)

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 09-07-2018

Heard learned counsel for the petitioners and learned
counsel for the Opposite Party-2.

Petitioners are aggrieved by order dated 10.06.2014
passed by Judicial Magistrate, Siwan in Tr. No. 3073 of 2014 by
which the Court below has rejected the petition for discharge
filed under Section 245 of the Cr.P.C.

Learned counsel for the petitioners has submitted that
petitioner no.1 is husband of the complainant. Petitioner nos. 2,
3 and 4 are Father-in-law and Dewar of the complainant. It is
further submitted that petitioner no. 1 is always ready to keep
the wife (Opposite Party No.2) with him. But she is not ready to



live with husband as she has landed property which she got from her parents. The two child born from the said wedlock are living with petitioner no.1.

Learned counsel for the Opposite Party No.2, on the other hand, has submitted that all these petitioners have harassed the complainant for demand of dowry. They have ousted her from sasural and not keeping her. It is further submitted that petitioner no.1 has filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, vide Matrimonial case no. 30 of 2003. The complainant has appeared in that case. The aforesaid case is still pending.

A report along with entire lower court record was called for from the court below which has been received. The learned Court below has mentioned in the report that case is, at present, pending for framing of charge. From perusal of the complaint petition, it appears that initially complaint was filed which was sent to the police station under Section 156(3) Cr.P.C. The police after investigation submitted final form against all the petitioners. But the Court below has taken cognizance against these petitioners after differing with the final form vide order dated 26.05.2004. The petitioners have challenged the aforesaid order of cognizance in this Hon'ble Court vide Cr. Misc. No.



24493 of 2004 (Annexure-9) which was disposed off with liberty to the petitioners to raise their points at the time of framing of charge. The petitioners have, accordingly, filed the discharge petition under Section 245 Cr.P.C. which was dismissed by the impugned order.

The learned Magistrate has mentioned in the impugned order that all the witnesses examined before charge on behalf of the complainant have supported the case. The learned Magistrate has further mentioned in the impugned order that there are sufficient materials to frame charge against the petitioners.

This Court, after looking into the allegation made in the complaint petition, finds that there is general and omnibus allegation against petitioner nos. 2, 3 and 4. The learned Magistrate in the impugned order has not disclosed any specific material which has been alleged against petitioner nos. 2, 3 and 4, who are Father-in-law and Dewars of the complainant. Therefore, the impugned order dated 10.06.2014 passed by judicial Magistrate Siwan along with entire criminal proceeding against petitioner nos. 2, 3 and 4 is hereby quashed.

So far allegation against petitioner no.1 is concerned, there is specific allegation in the complaint petition. He being



the husband of the complainant is not taking proper care of the complainant. Moreso, he has ousted her from matrimonial house for non-fulfillment of demand of dowry. This Court, therefore, does not find any illegality in the impugned order with regard to petitioner no.1.

The Court below will proceed in the case against petitioner no.1 in accordance with law.

This Cr. Misc. petition is accordingly, allowed in part.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14/7/18
Transmission Date	14/7/18

