

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11885 of 2015**

Arising Out of PS. Case No.-213 Year-2013 Thana- CHAKIA District- East Champaran

Raj Kishore Kumar @ Raja Kumar Ram @ Raj Kumar Ram Son of Asharfi
Ram R/o Village Khem Parsauni, P.S Chakia, District East Champaran

... .. Petitioner/s

Versus

1. State of Bihar.
2. Babunti Devi Wife of Shiv Chandra Ram @ Sheo Chandra Ram R/o Village Khem Parsauni, P.S Chakia, District East Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ramakant Yadav

For the Opposite Party/s : Mr. Awadhesh Kr.Singhapp

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER**

2 07-05-2019 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State.

Petitioner has filed the present application for quashing the order dated 10.11.2014 passed in Chakia P.S. Case No. 213 of 2013 Trial No. 8065 of 2014 passed by Judicial Magistrate, 1st Class, East Champaran, Motihari whereby and whereby the learned Magistrate took cognizance of the offence under sections 341, 323, 498(A) and 494 of the Indian Penal Code.

Mr. Anshuman Singh, learned counsel appearing on behalf of petitioner has submitted with reference to different annexure that in fact the complainant was married with the elder



brother of the petitioner who has filed the petition for restitution of conjugal Rights being Matrimonial Case No. 205 of 2013. He submitted that the complainant infact resides at her 'Mayka' Mr. Singh also placed reliance on several other documents to contend that she is not the wife of this petitioner. Taking cognizance at the instance of complaint of the informant is totally abuse of the process of law.

Mr. Anshuman Singh has placed reliance on the judgment of the Apex Court reported in **2012(3) SCC 64** to contend that taking cognizance in such cases is in abuse of process of case as on the basis of material available if no case is made out the Court should exercise jurisdiction under section 482 Cr.P.C. for the ends of justice. He has also placed reliance on the judgment of the Apex Court **2000(7) SCC 183** to contend that remedy for abuse of process is available under section 482 Cr.P.C. for the ends of justice. He submitted that the present case is clear abuse of the process of law.

Considering the entire materials available on the record the Court is of the view that petitioner should file application for discharge before the Court below and the Court below shall be under obligation to decide the issue raised in the discharge petition at the earliest preferably within a period of



two months from the date of filing of such application for discharge, while passing the order the Court below is required to consider all the materials facts, evidence and the submission incorporated in the petition for discharge by reasoned and speaking order.

With the aforesaid, the present application stands disposed of.

(Anil Kumar Upadhyay, J)

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