

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2670 of 2017**

Arising Out of PS. Case No.-573 Year-2015 Thana- KATIHAR COMPLAINT CASE
District- Katihar

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GAJANAND MAHTO @ GAJANAND KR. MAHTO Son of Nageshwar
Mahto, resident of Village- Fatehpur, P.S. Dagarua, District- Purnea.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Gudiya Kumari, D/o Jai Ram Mahto, resident of Village- Rupaspur, P.S.-
Rautara, District- Katihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sanjeev Kumar Singh, Adv
For the Opposite Party/s : Mr. Pradeep Narain Kumar, APP

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER**

2 15-03-2019 Heard learned counsel for the petitioner as well as

learned APP.

2. Petitioner who is husband, has challenged the

order dated 21.05.2016 passed by SDJM, Katihar in Complaint

Case No.573/2015 whereby and whereunder, he has been

summoned along with others to face trial for an offence

punishable under Section 498A IPC as well as 4 of the Dowry

Prohibition Act.

3. During course of submission, it has been

submitted at the end of learned counsel for the petitioner that

date of birth of petitioner happens to be 31.12.1998. That being

so, on the so alleged date i.e. in the month of September 2012,



he was certainly below the age of 18 years and that being so, was a juvenile. Furthermore, it has been submitted that he was kidnapped and then his forceful marriage was done with a girl aged about 22 years whereupon, a Matrimonial Suit No. 121/2915 has been filed. In the aforesaid facts and circumstances of the case, it has been submitted that the order impugned is fit to be set aside.

4. Learned APP opposed the prayer.

5. Without adverting to in depth scrutiny of the facts in hand, in *Prabhu Dutt Tiwari v. State of Uttar Pradesh* as reported in (2018) 13 SCC 609, it has been held as follows:-

4. At the stage of summoning the accused on the basis of a private complaint all that is required is a satisfaction by the Magistrate that there is sufficient ground to proceed against the accused in the light of the records made available and the evidence adduced by the complainant.

5. Having gone through the order passed by the Magistrate, it is fairly clear that there has been the required satisfaction. The discussion by the High Court would give an indication that the Magistrate had to appreciate the evidence and then enter a finding as to whether the accused are guilty or not. At the stage of summoning, as already stated above, the satisfaction required for the Magistrate is only to see whether there is sufficient ground to proceed against the accused.

6. Because of the fact that after conducting inquiry the learned lower court had summoned only two accused out of 10, so named in the complaint petition, speaks proper judicious



consideration of the facts in hand. In the aforesaid facts and circumstances of the case, instant petition is found devoid of merit and is, accordingly, rejected.

7. However, it is made clear that in case of prayer having been made at the end of petitioner before the learned lower court, the learned lower court will ascertain the age of the petitioner after conducting an inquiry as provided under the Juvenile Justice (Care & Protection of Children) Act, 2015, and if petitioner is found a juvenile, then in that event, will be proceeded in accordance therewith. In likewise manner, the fate of the Matrimonial Suit No. 121/2015 will be.

(Aditya Kumar Trivedi, J)

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