

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31059 of 2015

Arising Out of Case No.-43 Year-2015 Thana- GAYA COMPLAINT CASE District- Gaya

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1. Dilip Kumar Singh, S/o late Manik Singh
 2. Chandani Singh, D/o Sri Dilip Kumar Singh
 3. Rohit Singh, S/o Dilip Kumar Singh, All R/o Sunita Villa, Village- Madhobigha, P.O.- Odhanpur, District- Nawada, (Bihar)-805110, at present all are R/o B-2 Gokulvihar, Tokarkhada Silvasa, Pin- 396230 (Dadra and Nagar Haweli).

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sunil Kumar Verma, S/o late Krishna Kumar Verma R/o Old RMS Gali, Station Road, P.O. & P.S.- Nawada-805110, at present- Hatiya Mohalla, Darbar House, P.O.- & P.S.-Sherghati, District- Gaya- 824211.
3. Megha Kumari, W/o Shishupal Singh, resident of old RMS Gali, Station Road, P.O. and P.S.- Sherghati, District- Gaya- 824211.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Dr. Amrendra Kumar with Mr. Rana Randhir Singh, Advocates
For the State	:	Mr. Ajit Kumar, APP
For the O.P. No. 2 and 3	:	Mr. Murari Narain Chaudhary with Mr. Vijay Kumar, Advocates

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 19-04-2019

Heard learned counsel for the petitioners; learned APP
for the State and learned counsel for the opposite parties no. 2 and
3.

2. The petitioners have moved the Court under Section
482 of the Code of Criminal Procedure, 1973 (hereinafter referred
to the as the 'Code') for the following relief:

*“ That this is an application for quashing of the entire
complaint case No. 43 of 2015 and order dated
19/02/2015 passed by learned SDJM Sherghati, Gaya*



whereby and whereunder he has been pleased to take cognizance u/s 498 (A), 379, 504 of IPC and U/s 4 D.P. Act against all the three petitioners in Sherghati complaint case no. 43/15.”

3. The allegation against the petitioners, who are relatives of the husband of the daughter of the complainant, is of assault and torture and also of taking Rs. 7,50,000/- at the time of marriage and of demanding further Rs. 10,00,000/- as well as snatching of her belongings.

4. Learned counsel for the petitioners submitted that petitioner no. 1 is the father; petitioner no. 2, the sister and petitioner no. 3, the brother of the husband of the opposite party no. 3. It was submitted that the present case has been filed for oblique reasons and in fact it is to exert pressure in the partition suit which has been filed by the husband of the opposite party no. 3. It was further submitted that the opposite party no. 2 is the complainant but the victim is the opposite party no. 3, who has not come forward to file any complaint. It was further submitted that the matter is a civil dispute and basically the criminal case has been filed for taking advantage in the partition suit relating to property. In this connection, learned counsel relied upon the decisions of a Bench of this Court in **Niranjan Prasad vs. State of Bihar** reported as **2017 (3) PLJR 526** and **Premchand Singh vs. State of Bihar** reported as **2017(3) PLJR 659**. Learned



counsel submitted that the Hon'ble Supreme Court in **Inder Mohan Goswami v. State of Uttaranchal** reported as (2007) 12 SCC 1, at paragraphs no. 23, 24 and 46 has dealt with the scope and ambit of the power under Section 482 of the Code which is wide enough to prevent abuse of the process of the Court leading to injustice, though it has to be exercised sparingly. Learned counsel further submitted that petitioner no. 1 is suffering from kidney ailment and has to undergo dialysis every two days.

5. Learned APP and learned counsel for the opposite parties no. 2 and 3 submitted that the contentions of learned counsel for the petitioners is misconceived. It was submitted that the challenge being to the cognizance, the only thing which is required to be considered is whether, *prima facie*, offence is made out or not and nothing beyond that. It was submitted that from the narration in the complaint it is obvious that there was assault, torture for dowry as well as taking of huge money at the time of marriage. It was, thus, submitted that the Court below cannot be faulted for having taken cognizance based on the Solemn Affirmation of the complainant and the statement of the witnesses recorded during the enquiry.



6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application.

7. The Court finds substance in the contention of learned APP and learned counsel for the opposite parties no. 2 and 3 that at the stage of taking cognizance the only requirement for a Court is to apply its judicial mind only with a view as to whether *prima facie* case is made out for summoning the accused persons. In this connection the Court would refer to the judgment of the Hon'ble Supreme Court in **Rakhi Mishra vs. State of Bihar** reported as **2017 (4) PLJR (SC) 21**, where at paragraph no. 4, it has been held as under:

*“4. We have heard learned counsel appearing for the parties. We are of the considered opinion that the High Court erred in allowing the application filed by Respondent Nos. 2, 4, 5, 6, 7, 8, 9 and 10 and quashing the criminal proceedings against them. A perusal of the FIR would clearly show that the Appellant alleged cruelty against Respondent Nos. 2, 4, 5, 6, 7, 8, 9 and 10. This Court in **Sonu Gupta vs. Deepak Gupta and Ors.** (2015) 3 SCC 424, 426 held as follows:*

*“At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence to find out whether a *prima facie* case is made out for summoning the accused persons. At this stage, the Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because*



the Magistrate must not undertake the exercise to find out at this stage whether the materials would lead to conviction or not.”

8. Similarly, the Hon'ble Supreme Court in **Prabhu Dutt Tiwari vs. State of Uttar Pradesh** reported as **2018 (1) PLJR (SC) 332**, at paragraphs no. 4, 5 and 6, has held as under:

“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. Such a satisfaction for summoning an accused having been made out, the High Court went wrong in interfering with the summoning order. It was too early for the High Court to enter a finding otherwise. The impugned order is, hence, set aside. The appeal is allowed.”

9. From the aforesaid, it is clear that before the Court, at the stage of taking cognizance, there were materials to indicate that offences under the Indian Penal Code had been committed. Thus, it cannot be said that the order impugned suffers from either factual or legal infirmity. The law provides and takes care of the



interest of the accused where during subsequent stages, they have the right to present their defence and the Court is obliged to consider the same, in accordance with law. However, for the purposes of taking cognizance, this Court does not find that there has been any shortcoming or illegality committed by the Court below so as to warrant any interference under its inherent power under Section 482 of the Code.

10. In view thereof, the application stands dismissed.

(Ahsanuddin Amanullah, J)

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