

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 50403 of 2014**

Arising Out of P.S. Case No.-103 Year-2011 Thana- MOHIUDDIN NAGAR District-
Samastipur

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Bhola Prasad Rai, S/o Ram Aslok Rai, resident of Village- Kursaha, P.S.-
Mohiuddin Nagar, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sheela Devi, Daughter of Late Gyanchand Rai, resident of Village-
Hattenpur, P.S.- Patori, District- Samastipur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar, Advocate
For the State : Mr. Pawan Kumar Chaurasia, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 02-04-2019

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 for the following relief:

*“That this is an application on behalf of
the above named petitioner for quashing cognizance
order dated 25.05.12 passed by the Chief Judicial
Magistrate, Samastipur in G.r. No. 1369/11, Tr. No.
1949/2014 arising out of complaint cum Mohiuddin
Nagar P.S. Case No. 103/2011 dated 04.07.11 so far
petitioners are concerned, whereby and where under
cognizance has been taken under section 498 (A),
323/34 of Indian Penal Code against the
petitioners.”*



3. Though the informant has been impleaded as opposite party no. 2, but learned counsel for the petitioner submitted that she is already dead.

4. Learned counsel for the petitioner submitted that in the same criminal case, co-accused Lalita Devi who is the married sister of the petitioner had moved this Court in Cr. Misc. No. 50473 of 2014 in which by judgment dated 18.12.2018, the application was allowed and the order which is impugned in the present application has been quashed, though as far as it relates to the said petitioner.

5. The allegation against the petitioner and seven others is general and omnibus of torture and demand of dowry. The petitioner is the alleged husband of the opposite party no. 2.

6. Learned counsel for the petitioner submitted that the case is totally false and frivolous and a clear cut case of abuse of the process of the court. It was submitted that the opposite party no. 2 had claimed that she was married to the petitioner in the year 1999 and based on the same the allegation for dowry has been made. It was submitted that when the petitioner had moved this Court earlier seeking anticipatory bail, the Court in the presence of the opposite party no. 2 and the petitioner had directed for DNA test of the daughter of the opposite party no.2, Anshu Kumari, allegedly fathered by the petitioner. Pursuant to the direction, the



DNA test was done at Central Forensic Science Laboratory, Kolkata and a report was submitted dated 13.06.2013. Based on the report, which showed that the child was not that of the petitioner, the Court had observed that it *prima facie* established the story of the petitioner that he never married the opposite party no. 2 and also falsified the story set up by the complainant. Accordingly, anticipatory bail was granted to the petitioner. Learned counsel submitted that the opposite party no.2 was married elsewhere and when her husband died she tried to force herself on the petitioner for accepting her as his wife and also take the responsibility for the child whose father was not the petitioner but another person,whom the opposite party no. 2 had married, and he had died.

7. Further, learned counsel relied upon the decision in the case of **Savitri Lal and Ors, vs. The State of Bihar and Another** dated 20.07.2018 in Cr. Misc. No. 41779 of 2014, in which reference has been given of various decisions of the Hon'ble Supreme Court where interference has been made on the ground that the close relatives of the husband are falsely implicated for oblique reasons.

8. Learned A.P.P. fairly submitted that though allegations have been made in the complaint petition but from the facts



brought on record and also the opposite party no. 2 being dead, the Court may grant indulgence to the petitioner.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. From the entire complaint petition, it transpires that there are only vague and general allegations with regard to torture and demand of dowry. However, in view of the story set up in the complaint by the opposite party no. 2, that her daughter was fathered by the petitioner, having been scientifically falsified by the DNA Test, the Court finds that the present case is also false and letting it continue would be an abuse of the process of the Court.

10. For reasons aforesaid, the application is allowed. The order dated 25.05.2012 taking cognizance by the Chief Judicial Magistrate, Samastipur in Gr. No. 1369 of 2011/ Tr. No.1949 of 2014, arising out of Mohiuddin Nagar P.S. Case No. 103 of 2011, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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