

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4594 of 2017

Arising Out of PS. Case No.-113 Year-2014 Thana- NAVINAGAR District- Aurangabad

1. Ali Hussain
2. Nezamuddin @ Nezamuddin Ansari
3. Hafiz @ Md. Hafiz Ansari all the three sons of late Kabedin Ansari resident of Mohalla Azadnagar, Tikri Road, PS-Aurangabad, Distt-Aurangabad.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Smt. Zahida Khatoon wife of Sri Nezamuddin resident of Village-Serajpur PS Nabinagar, Distt-Aurangabad, Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sushil Kumar Singh, Adv
For the Opposite Party/s : Mr. Parmanand Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 16-05-2019 Heard learned counsel for the petitioners as well as
learned APP.

This matter relates to a prayer purported to be under
Section 239/240 CrPC.

There happens to be submission at the end of the
petitioners that petitioners no.1 and 3 were not sent up for trial
while petitioner no.2, as is evident from the order impugned as
disclosed, by the petitioner no.2, had divorced the informant on
26.03.2014. The informant had admitted the factum of divorce
but, exact date is under mark of question.

In the aforesaid background, the order impugned is fit to
be set aside by way of allowing the discharge of the petitioners.



Learned APP opposed the prayer.

It happens to be a case amongst the spouses. Be that as it may, from the order impugned, it is evident that after going through the case diary, learned lower court has found a *prima facie* case subsisting against the petitioners whereupon, the prayer has been rejected. It is needless to say, as observed by the Hon'ble Apex Court in the case of ***Amit Kapoor v. Ramesh Chander*** as reported in ***(2012)9 SCC 460***, that at the time of framing of charge, the materials to be appreciated happens to be weaker than the *prima facie* case.

That being so, the order impugned needs no interference. Accordingly, instant petition is rejected.

(Aditya Kumar Trivedi, J)

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