

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71142 of 2019

Arising Out of PS. Case No.-57 Year-2019 Thana- MAHILA P.S. District- Kaimur (Bhabua)

1. Kamlesh Kumar, aged about 33 years, Gender-Male.
 2. Amaresh Kumar, aged about 34 years, Gender-Male.
- Both are Sons of Rama Shankar Ram, Resident of Village - Dullahpur, Harnathpur, P.S. - Mohania, District - Kaimur (Bhabua).

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Smita Kumari, aged about 22 years, Gender-Female, Wife of Kamlesh Kumar, Daughter of Babu Lal Ram, at present Resident of Village - Nuaon, P.S. - Durgawati, District - Kaimur (Bhabua).

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Kumar Sunil, Adv.
For the Opposite Party/s : Mr. Yogendra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 08-11-2019 The petitioner No. 1, who is the husband of the opposite party No. 2 and the petitioner No. 2, who is the brother of the petitioner No. 1, have sought quashing of the order dated 04.09.2019 passed by the learned Sub-Divisional Judicial Magistrate, Kaimur (Bhabua) in Mahila (Bhabua) P.S. Case No. 57 of 2019, whereby process has been directed to be issued under Section 82 of the Code of Criminal Procedure (*in short the Cr.P.C.*).

It is the case of the petitioners that an unnecessary



haste has been shown by the Court in issuing such process. The F.I.R. was registered on 17.07.2019 and within a month, a requisition was filed for issuance of warrant of arrest on 23.08.2019 which was allowed on 29.08.2019. A prayer was made for issuance of process under Section 82 Cr.P.C. on 04.09.2019, which also was allowed.

It has been submitted on behalf of the petitioners that mediation between the petitioner No. 1 and the opposite party No. 2 is going on and as on date, the petitioner No. 1 is residing with opposite party No. 2 under the same roof as man and wife. Apart from this, it has been submitted that the petitioners had subjected themselves to the process of law and had filed anticipatory bail petition before the Court below, which stood rejected.

The application preferred by the petitioners for anticipatory bail before this Court was not entertained at the first instance on the plea that a process under Section 82 Cr.P.C. has been directed to be issued.

Without going into the aforesaid question, *viz.*, whether an anticipatory bail petition would be barred in the



absence of any proclamation under Section 82 (5) Cr.P.C., this Court deems it appropriate to direct the Court below that in case the petitioners surrender before the Court below along with the opposite party No. 2 and prays for protection so that the mediation process could be concluded properly, necessary order shall be passed by the Court below. It is also required to be noted that for the petitioners to appear before the Mediator, they do require protection.

Since the opposite party No. 2 is now residing with petitioner No. 1, this aspect of the matter would be considered and necessary order shall be passed by the Court below, recalling the order of issuance of process under Section 82 Cr.P.C. and granting reasonable protection, so that the mediation at the instance of the Court is carried out effectively.

With the aforesaid observation/direction, the petition stands disposed off.

(Ashutosh Kumar, J)

Praveen-II/-

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