

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77831 of 2019

Arising Out of PS. Case No.-7 Year-2019 Thana- SUKHANI District- Kishanganj

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1. Niranjan Karmkar @ Niranjan Armkar, aged about 28 years, Male
 2. Sapan Karmkar, aged about 20 years, Male, both Sons of Eknam Karmkar (both brothers in law)
 3. Eknam Karmkar, aged about 60 years, Male, Son of late Kuldeep Karmkar (father in law)
 4. Nirmala Devi, aged about 55 years, Female, Wife of Eknam Karmkar (mother in law), all residents of Sukhani, P.S.- Sukhani, Distt - Kishanganj.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Putul Karmkar, aged about 19 years, Female, D/o Aasin Karmkar, Resident of Dhantola, P.S.- Islampur, Distt - Utter Dinajpur (West Bengal)

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Dilip Kumar Singh, Advocate

For the Opposite Party/s : Mr.Jitendra Kumar Singh

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

2 02-12-2019 Heard learned counsel for the petitioners and the learned A.P.P. for the State.

2. The present application has been filed for quashing the order dated 29.07.2019 passed by Sri A.K. Das, Judicial Magistrate 1st Class, Kishanganj in connection with Sukhani P.S. Case No.07 of 2019, whereby cognizance has been taken against the petitioner for the offences under Sections 498(A), 504/34 of the Indian Penal Code and Sections 3/4 of Dowry Prohibition Act.

3. Prosecution story is that the above mentioned



F.I.R. has been registered on the basis of the written application of the informant Putul Karmkar in which she has alleged and stated that she and the co-accused Munna Karmkar were in love with each other and about one year ago both of them got married and has been living separately as wife and husband, but when the informant came to know about this fact that her so-called husband is going to marry some other girl she along with the other family members reached at the house of the petitioners where the petitioners demanded the dowry of Rs.4 lakhs and a four wheelers vehicle.

4. Taking into consideration the aforesaid fact, the learned Magistrate finds a prima facie case as made out under Sections 498(A), 504/34 of IPC and Sections 3/4 of Dowry Prohibition Act and as such cognizance has been taken for the offences punishable under Sections 498(A), 504/34 of I.P.C. and Sections 3/4 of Dowry Prohibition Act against the accused persons vide order dated 29.07.2019 and the case is put up on 21.08.2019 for the appearance. The said order is under challenge before this Court.

5. It has been submitted by learned counsel for the petitioners that the allegation made in the F.I.R. is totally false. There are general and omnibus in nature. As a matter of fact that



neither any marriage has been solemnized between the co-accused Munna Karmkar and the informant nor they are wife and husband, therefore, the matter does not arise under Sections 498(A), 504/34 of I.P.C. and Sections 3/4 of Dowry Prohibition Act.

6. On the other hand, learned counsel for the State has submitted that the defence of the petitioners can be examined only at the stage of the trial.

7. Learned counsel for the State submits that in any event, this is very early stage wherein only cognizance has been taken on the basis of finding a prima facie case against the petitioners. He relies on the decision in **1996 Criminal Law Journal 2448 (SC) (State of Maharashtra and others vrs. Som Nath Thapa and others)** to contend that the test of prima facie case has to be applied at the stage at which the Court is required to consider the question of framing of charge, therefore, the level of satisfaction at the stage of taking cognizance is of an even lower standard. He also relies on **AIR 1971 SC 1389 (Balraj Khanna and others vrs. Moti Ram)** for the same proposition.

8. I have heard learned counsel for the parties and perused the record.



9. Admittedly, there are serious allegations made in the F.I.R. against the petitioners. The veracity of such allegation cannot be taken into consideration at this stage for the purpose of quashing of order of taking cognizance. The defence is to be considered by the Court either at the stage of framing of charge or at the stage of trial.

10. In that view of the matter, I find no illegality in the impugned order passed by the court below.

11. Accordingly, this application is dismissed.

12. However, the petitioners would be at liberty to raise all the points available to them at the stage of framing of the charge.

(Anjani Kumar Sharan, J)

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