

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.77982 of 2019**

Arising Out of PS. Case No.-233 Year-2006 Thana- LAHERIYASARAI District- Darbhanga

Md. Hasim @ Md. Hashim Ali, aged about 63 years, Male, Son of Late Md. Kasim, Resident of Mohalla - Karamganj, Police Station - Laheria Sarai, District - Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Anguri Khatoon, Wife of Md. Hasim, Resident of Mohalla - Wakerganj, Abhanda, Police Station - Laheria Sarai, District - Darbhanga.

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr.Nirbhay Prashant. Advocate  
For the Opposite Party/s : Mr.Umanath Mishra

**CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN**  
**ORAL ORDER**

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

2.      The present application has been filed for quashing the order dated 25.09.2019 passed by the Sub Divisional Judicial Magistrate, Darbhanga in Trial No.279 of 2019 arising out of G.R. No.1593 of 2006 wherein and whereunder he has been pleased to direct the petitioner to give his blood for DNA tests even though the petitioner has given his blood for DNA tests and same was sealed in the presence of SDJM, Darbhanga on 30.05.2019.

3.      The case, in short, as it appears from the petition is that opposite party no.2 filed a case under Sections 498A and



379/34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act against the petitioner and trial was going on. During trial, a petition has been filed by the opposite party no.2 dated 07.04.2012 for conducting D.N.A. test of her children so that she could prove that her sons and daughter were borne from her wedlock with the petitioner. The aforesaid petition filed by the opposite party no.2 was rejected by the learned Sub Divisional Judicial Magistrate vide order dated 03.05.2017 against which the opposite party no.2 has preferred Cr. Rev. No.199 of 2017, which was heard and allowed by the learned District and Sessions Judge, Darbhanga vide order dated 04.07.2017.

4. The petitioner has filed Cr. Rev. No.912 of 2017 against the order dated 04.07.2019 passed by the learned District and Sessions Judge, Darbhanga in Cr. Rev. No.199 of 2017 whereby and whereunder the Hon'ble High Court finds no illegality in the order of the learned District and Sessions Judge, Darbhanga dated 04.07.2017 and hence revision application is devoid of any merit. Accordingly, it is dismissed. However, the process of D.N.A. test must be concluded within a period of four months from the date of receipt/production of a copy of this order.



5. In presence of S.D.J.M., Darbhanga on 30.05.2019, Nusrat Jahan, S.I. of Laheriasarai P.S. filed format for sending blood sample to Director, F.S.L., Patna in four copies. Blood sample sealed in presence of me and format duly signed by me and handed over to S.I. Nusrat Jahan of Laheriasarai P.S. On 01.06.2019, S.I. of Laheriasarai P.S. Nusrat Jahan filed a petition vide Memo No.1609 of 2019 dated 01.06.2019 praying therein to depute a Executive Magistrate for sending blood sample (Annexure-7 of the present petition).

6. Petitioner has filed a modification petition vide Cr. Misc. No.50718 of 2019 of order dated 04.07.2019 passed in Cr. Revision No.912 of 2017, which was disposed of by order dated 14.08.2019 (Annexure-9) and directed the petitioner to file a petition before the SDJM, which shall be disposed of by a reasoned order giving reason for taking blood sample in second time and he also expedited the submission of DNA test report.

7. Learned counsel for the petitioner submits, that pursuant to the order dated 14.08.2019 passed in Cr. Misc. No.50718 of 2019, petitioner filed a petition before SDJM., and same was rejected by SDJM, Darbhanga vide order dated 25.09.2019 (Impugned order) without giving any reason as to why he has proceeded for taking blood sample again for DNA



tests.

8. I have seen the impugned order dated 25.09.2019, learned SDJM, Darbhanga has passed a reasoned order (which is under challenge). In the present quashing application, learned SDJM, Darbhanga has mentioned in the order dated 25.09.2019 stating therein that since the petition filed on behalf of I.O. dated 01.06.2019 in which she prayed for collection of blood sample in presence of Executive Magistrate which is essential requirement for the collection of blood sample for DNA Test as per F.S.L. Perused the petition filed on behalf of I.O. dated 01.06.2019 in which she has mentioned that F.S.L. refused to accept the blood sample due to technical error and return the same and required fresh sample of blood for DNA Test for which presence one Executive Magistrate is essential. He further mentioned in the order that since the Hon'ble High Court of Patna has already ordered for DNA Test. Merely on the technical ground that once blood has been taken there it should not be taken on second time does not sustained as because truth must come out.

9. In my opinion, the learned SDJM, Darbhanga has rightly passed the order dated 25.09.2019. In the facts and circumstances of the case, there is no merit in the present case.



10. Accordingly, the present application is dismissed.

**(Anjani Kumar Sharan, J)**

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