

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 77659 of 2019

Arising Out of PS. Case No.-289 Year-2018 Thana- GAYA KOTWALI District- Gaya

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1. MINTU KUMAR Son of Sri Gopal Prasad R/O- Mohalla - New Bighrapur, Bihari Path, P.O.- G.P.O. Patna, P.S.- Jakkanpur, Distt.- Patna
 2. Soni Kumari Daughter of Sri Gopal Prasad R/O- Mohalla - New Bighrapur, Bihari Path, P.O.- G.P.O. Patna, P.S.- Jakkanpur, Distt.- Patna

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Ms. Suman Gupta Daughter of Ramu Prasad Gupta R/O- Mohalla - Goal Bagicha Kallu Lal Lane, P.S.- Kotwali, Distt.- Gaya

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Chandra Shekhar Singh
For the Opposite Party/s : Mr.Gauri Shankar Gupta

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 28-11-2019 The present petition has been filed against the order dated 27.09.2018 passed by the learned Chief Judicial Magistrate, Gaya in connection with Kotwali PS case no. 289 of 2018, whereby and whereunder cognizance of the offence under Sections 406/34 of Indian Penal Code and 3/4 of Dowry Prohibition Act has been taken against the petitioners.

The brief facts of the case, according to the informant, is that her marriage was settled with the petitioner no. 1 who is stated to have been working in the Punjab National Bank, whereafter the ring ceremony had taken place in Apsara Hotel, Kadamkuan on 07.02.2018. It is further alleged by the informant



that her father had given a sum of Rs. 10 lacs, by way of dowry to the father of the petitioner no. 1, after he had come to the house of the father of the informant at Gaya. It has also been alleged that the father of the petitioner no. 1 had also demanded a four-wheeler vehicle, however the father of the informant had shown his helplessness. Subsequently, it has been alleged that the father of the informant had gone to the house of the petitioner no. 1, however he was pushed out of the house as also the accused persons had threatened the father of the informant that they would implicate him in false case and had not only cancelled the marriage but had also not returned back the dowry taken by the petitioner no. 1 and his family members.

The learned counsel for the petitioners has submitted that the petitioner no. 1 is the boy with whom it has been alleged that the marriage of the opposite party no. 2 was fixed and petitioner no. 2 is the sister of the petitioner no. 1. It is further submitted that the petitioners have been falsely implicated in the present case and the learned Judicial Magistrate, Gaya has illegally and wrongly taken cognizance vide impugned order dated 27.09.2018, without there being any material on record.

I have heard the learned counsel for the petitioners and a bare perusal of the impugned order dated 27.09.2018



shows that the learned Chief Judicial Magistrate, Gaya has taken cognizance of the offences under Sections 406/34 of Indian Penal Code and 3/4 of Dowry Prohibition Act, against the accused persons i.e. the petitioners herein, after considering and perusing the case diary and the materials available on the record as also after finding that a prima facie case is made out, hence it cannot be said that the same suffers from legal infirmity.

At this juncture, it would be relevant to state that it is a well settled law that at the time of cognizance, the learned court below is only required to see as to whether on the basis of materials collected during the enquiry, prima facie offences is made out or not, so as to proceed against the accused persons and the defence of the accused persons cannot be looked into at the stage of taking cognizance.

Thus, this Court is of the considered opinion that since a prima facie case has been made out against the petitioners herein, as aforesaid, the learned court below has rightly taken cognizance against the petitioners herein. This Court is of the further view that it is not the case of the petitioners that the order of cognizance is without jurisdiction or there is any technical error. The only argument which has been advanced on behalf of the petitioners is that the matter is



required to be examined on merits, however, this Court is of the opinion that since the Code of Criminal Procedure itself provides certain remedies to the accused persons, order of cognizance, in absence of any illegality, is not required to be interfered with.

Considering the aforesaid facts and circumstances of the present case as also there being no apparent error in the impugned order dated 27.09.2018, this Court is of the opinion that the impugned order dated 27.09.2018 does not suffer from any infirmity so as to warrant any interference, hence the present petition stands dismissed, however, with an indication that the petitioners may take all the pleas, which have been taken in the present petition, at an appropriate stage i.e. at the stage of framing of charge by the learned court below.

(Mohit Kumar Shah, J)

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