

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79745 of 2019

Arising Out of PS. Case No.-1103 Year-2016 Thana- SITAMARHI COMPLAINT CASE
District- Sitamarhi

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HEENA JAI SINGH D/O - Late Harish Jai Singh Alleged Wife of Sanjay Kumar Mishra @ Munna, Resident of House No. 85, Sarswati Vihar, P.S.- Sarswati Vihar, Noida (U.P.), alleged Resident of Village - Chandauna, P.S.- Jale, District- Darbhanga

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Sushma Mishra Wife of Sanjay Kumar Mishra @ Munna Resident of Village - Chandauna, P.S.- Jale, District- Darbhanga. At present D/O- Late Kamla Sharma, Resident of Village - Lagma, P.S.- Dumra, District- Sitamarhi

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Ajit Ranjan Kumar

For the Opposite Party/s : Mr.Syed Mojibur Rahman

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 29-01-2020

Heard learned counsel for the parties.

This application has been filed under Section 482 of the Cr.P.C for quashing the order dated 24.01.2017 passed by learned Sub Divisional Judicial Magistrate, Sitamarhi, in Complaint Case No. 1103 of 2016 by which learned court below took cognizance against the accused-petitioner for the



offence punishable under Sections 498A, 494/34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

Complainant is the wife of accused no. 1 Sanjay Kumar Mishra who in her complaint petition has stated that she was married to accused no. 1 Sanjay Kumar Mishra, on 04.05.2009, according to Hindu customs and rites, and gifts and presents were given at the time of marriage.

After marriage Complainant went to her matrimonial home and started leading conjugal life with accused no. 1 who is businessman, however, she was being tortured and harassed by accused no. 1 to 3 for non fulfillment of demand of dowry and subsequently she came to know that in the year 2012 accused no. 1 solemnized second marriage with accused no. 4(petitioner), which was within the knowledge of accused no. 2 and 3 as they were present in the said marriage and from said illegitimate relation a girl child was also born and when she protested about said relation she was assaulted and her ornaments were snatched and thereafter she was driven out of her matrimonial home.

Complainant was examined on S.A. in which she supported the allegations made in her complaint petition.

In support of complaint case three enquiry witnesses



were examined on behalf of complainant who have supported the case of the complainant.

On the basis of said written complaint examination of complainant on S.A. and statement of enquiry witnesses, the Court below found *prima facie* case to be made out against the petitioner and by order dated 24.01.2017 took cognizance against the accused-petitioner under Sections 498A, 494/34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

At the stage of taking cognizance the court has to form an opinion on the basis of materials available on record whether a *prima facie* case is made out against the accused or not. Relevancy, adequacy and sufficiency of material cannot be considered at the stage of taking cognizance.

The defence of the accused cannot be considered at the stage of taking cognizance. This Court in its inherent jurisdiction cannot substitute its view regarding sufficiency or adequacy of material before the court below at the time of taking cognizance and issuance of summons against accused as same is within exclusive domain of trial court, as such I am not inclined to interfere with the order dated 24.01.2017 passed by learned Sub Divisional Judicial Magistrate,



Sitamarhi.

The criminal miscellaneous petition is dismissed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.02.2020
Transmission Date	22.02.2020

