

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51599 of 2018

Arising Out of PS. Case No.-50 Year-2010 Thana- BIHAR District- Nalanda

=====

Ramakant Rai Son of Sri Ramji Prasad, resident of Mohalla- Garhpur,
Biharsharif Police Station- Bihar, District- Nalanda.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Bhagwan Prasad, son of Late Tetar Singh, resident of Village- Talabpar,
Police Station- Sohasarai, District- Nalanda.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Prabhu Narayan Sharma, Adv.

For the Opposite Party/s : Mr. Arif, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 10-07-2024

The petitioner is the husband of the deceased Arti Kumari. Her marriage was solemnized with the petitioner on 8th June, 2003. On 18th March, 2010, the wife of the petitioner suffered burnt injury and on the basis of a written complaint submitted by the father of the deceased, a case under Sections 498A/304B/34 of the I.P.C. and 3/4 of the Dowry Prohibition Act was registered against the petitioner and other matrimonial relations.

2. It is contended on behalf of the petitioner that Police after investigation submitted final report against the petitioner on the ground that the petitioner was not present on the fateful date of



incident. However, the learned Magistrate took cognizance against the petitioner for the offence punishable under Sections 498A/304B/34 of the I.P.C. on the materials in case diary.

3. It is found from the record that the petitioner challenged the order of cognizance by filing Cr. Misc. No. 23298 of 2013, which was disposed of by Hon'ble Rakesh Kumar, J. vide order dated 7th December, 2016. This Hon'ble Court held in the aforementioned case that when a Magistrate intends to take cognizance differing with the Police report, he would be required to assign succinctly reason for differing with the Police report. Thus, the order of cognizance was set aside and the case was remanded back to the trial court to decide the case from pre-cognizance stage. After receiving the said order the learned Judicial Magistrate on 21st March, 2017, passed an order taking cognizance of offence against the petitioner on the basis of the materials in the case diary specially in paragraphs 1, 2, 5, 6, 7, 9, 10, 11, 12, 38, 39, 41, 42, 50, 51, 52, 53, 81, 84, 85, 89, 136, 147, 169, 185, 186 and 187. The petitioner again challenged the said order by filing an application under Section 482 of the Cr.P.C. which was registered as Cr. Misc. No. 24737 of 2017. The aforementioned Cr. Misc. case was disposed of on 14th March, 2018 and the same was dismissed by a Coordinate Bench of this



Court. It was directed, inter alia, that it is desirable to observe that the Hon'ble Court below may take appropriate steps, so that after completion of all formalities, the case may proceed without any further delay.

4. The Criminal case was thereafter taken up for consideration of charge. The petitioner filed an application under Section 227 of the Cr.P.C. praying for his discharge. The said application has been rejected. The instant Misc. Case under Section 482 of the Cr.P.C. has been filed.

5. Having heard the learned Advocate for the petitioner and on careful perusal of the entire materials on record, this Court likes to observe that the principle of res judicata is not directly applicable in criminal case. However, it is found that the learned Magistrate took cognizance of the offence against the petitioner on the basis of materials in the Police report. The said order was challenged before this Court and the petitioner's application was dismissed. The trial court was also directed to proceed with the case at the earliest. When the High Court found that the cognizance of offence was rightly taken, the next step for the learned Magistrate is to frame charge for the offence for which the petitioner is liable to be tried.



6. Therefore, the instant application challenging the order of rejection of petition for discharging the petitioner under Section 227 of the Cr.P.C. is misconceived and accordingly, the instant Cr. Misc. case is dismissed.

7. The trial Court is directed to proceed with the trial at the earliest and take all endeavour to dispose off the case preferably within six months from the date of communication of this order.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

