

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53915 of 2017

Arising Out of PS. Case No.-12 Year-2017 Thana- MUFFASIL District- West Champaran

Prabhash Kumar, Son of Sri Niwas Prasad, resident of Village- Nawarangia
Patarakha, P.S.- Manuapul, District- West Champaran.

... .. Petitioner/s

Versus

1. State of Bihar
2. Geeti Gunjika, D/o Sri Arvind Kumar Singh and wife of Prabhash Kumar,
resident of Village- Amawa, Majhar, P.S. Bettiah Mufassil, District- West
Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Adv. Mr. Akhileshwar Kumar Shrivastva, Adv.
For the Opposite Party/s	:	Mr. Chandra Bhushan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

9 07-01-2025 Heard Mr. Rajendra Narayan, learned senior counsel
appearing for the petitioner and Mr. Chandra Bhushan Prasad,
learned APP appearing for the State.

2. The instant petition has been filed against the order dated 19.04.2017 passed by the court of learned A.C.J.M. 1st, Bettiah, West Champaran, in connection with Bettiah (Mufasil) P.S. Case No. 12 of 2017, whereby the cognizance of the offences punishable under sections 307, 313, 498A, 341, 342 and 504 read with section 34 of the Indian Penal Code (in short 'IPC') and sections 3 and 4 of the Dowry Prohibition Act (in short 'D.P. Act') has been taken against the petitioner.

3. The main grounds taken by learned senior counsel



appearing for the petitioner to assail the order impugned are that the prosecution story with regard to the allegation which is said to have taken place on 15.01.2017 as per the FIR, is completely unbelievable as much earlier from that date, in between the petitioner and the informant, the matrimonial relation had deteriorated and initially, the petitioner filed a Matrimonial Case No. 25 of 2016 under section 9 of the Hindu Marriage Act for the restitution of conjugal rights which was later withdrawn and thereafter, the petitioner filed a matrimonial suit for divorce on 07.09.2016 and in that case, the notices were sent to the O.P. No. 2 but she did not appear and also in the present matter, she has not appeared despite the notices have been served upon her. During the investigation, it has come into light that the O.P. No. 2 never visited at her sasural on 15.01.2017, the date relating to the main occurrence which is said to have taken place in the matrimonial house of the O.P. No. 2 and the statements of the material witnesses mentioned in the paragraph Nos. 8, 9 and 10 of the case diary were not appreciated by the learned Magistrate while differing with the police conclusion which was in favour of the petitioner and secondly, the co-accused persons, namely, Madhu Kumari @ Madhu Devi and Puja Kumari @ Puja Devi, though they are said to be the in-laws of the O.P. No. 2 but carrying the same nature of allegation preferred criminal miscellaneous No.



23673/2017 with a prayer to quash the cognizance order relating to them and their prayer was allowed vide Judgment dated 09.12.2019 passed in the said criminal miscellaneous petition, and if the allegations levelled in the FIR are taken into account then no case is made out to differentiate between the allegations levelled against the petitioner and the allegations levelled against the in-laws, so, when the co-accused persons carrying similar allegations have been exonerated from the criminal liability then why should the petitioner face the same liability and further, the order impugned dated 19.04.2017 by which the cognizance of the alleged offences has been taken in itself shows the non-application of judicial mind by the learned Magistrate as he simply mentioned that the case diary provided sufficient materials to make out a *prima facie* case but did not take any pain to mention the said materials and the order impugned clearly shows that the Magistrate while taking cognizance mainly took into account the materials available in the case diary.

4. On the other hand, learned APP for the State has vehemently opposed this petition and submitted that the judgment dated 09.12.2019 passed in Cr. Misc. No. 23673/2017 by which the relief has been granted to the in-laws should not be made a ground while granting the relief to the petitioner as then learned co-ordinate Bench of this Court while granting the relief to the



said co-accused persons mainly took into account the relationship between the co-accused persons and the O.P. No. 2 while the petitioner is said to be the husband of the O.P. No. 2 and he was mainly responsible for all the alleged acts which are alleged to have been committed with the O.P. No. 2.

5. Heard both the sides and perused the order impugned, case diary and other relevant materials. As per the FIR, the marriage in between the petitioner and the O.P. No. 2 took place in the year 2012 and as per the above submissions, the relation between the O.P. No. 2 and the petitioner started deteriorating after their marriage and they started living separately and the O.P. No. 2 chose to reside in Delhi owing to her job and during that course, the petitioner firstly preferred a matrimonial suit for the relief of restitution of his conjugal rights and thereafter, filed a matrimonial suit for dissolving the matrimonial relation and in that case, the O.P. No. 2 did not appear as per above submission and in the present matter also, she has not chosen to contest and in the case diary, some witnesses who can be deemed to be the material persons with regard to the main alleged occurrence which is said to have taken place on 15.01.2017, stated that the O.P. No. 2 did not visit at her matrimonial house on the said date, though the allegations levelled in the FIR as well as in the restatement by the informant



and her father in the paragraph No. 5 of the case diary are relevant to some extent to the alleged offences but the learned Magistrate passed the order impugned without appreciating even *prima facie* the materials available in the case diary which is not proper and not in accordance with settled principle of law as a Magistrate is required to give some satisfactory reasons, though in brief manner to justify his conclusion as to differing with the police report but in this matter, it appears that the order impugned has been passed in mechanical manner without giving any reason while disbelieving the police conclusion, so, the order impugned is not sustainable in the eye of law, thus, it stands set aside and the learned Magistrate is directed to pass a fresh order on the point of the cognizance in accordance with law keeping in view the materials available in the case diary and the facts mentioned in the protest petition preferred by the O.P. No. 2, without being prejudiced with this order.

6. In the result, the instant petition stands allowed with the aforesaid direction.

(Shailendra Singh, J)

annu/-

U		T	
---	--	---	--

