

IN THE HIGH COURT OF JUDICATURE AT PATNA

Cr.Misc. No.8841 of 2010

1. MD. MAHFUJULLAH son of Molvi Md. Yunus
2. Md. Hamidullah son of Molvi Md. Yunus
3. Tabrej Alam @ Md. Tabrej son of Molvi Md. Yunus
Sl. No. 1 to 3 resident of village Domhara, P. S. Jokihat, District-
Araria.
4. Md. Nurul Hasan son of Mohiuddin, resident of village Lalwabari, P. S.
Jokihat, District- Araria.

... Petitioners.

Versus

1. STATE OF BIHAR
2. Durveshdhwar @ Guriya wife of Md. Mahfujullah and daughter of
Anwarul Haque, resident of village Benghan, P. S. Amour, District-
Purnea.

.. Opposite parties.

2. 31.03.2010

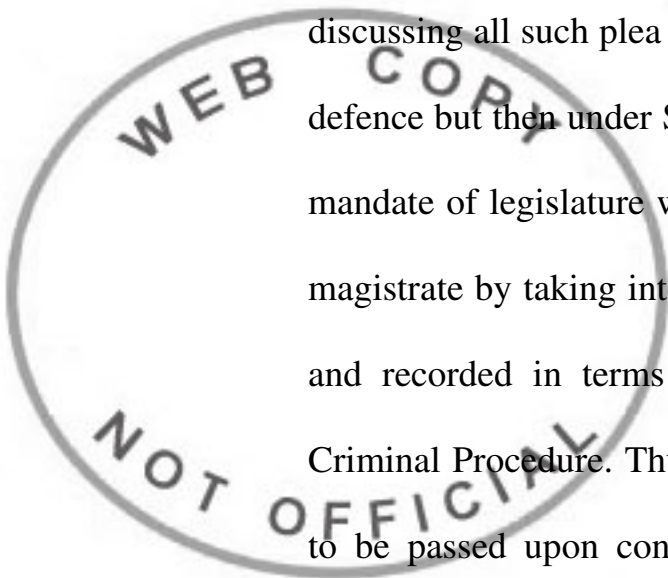
Having heard learned counsel for the parties

this much is evidenced that when an application was filed
for discharge in terms of Section 245 of the Code of
Criminal Procedure all that the court below has done is to
record the following finding for rejecting such petition:-

“..perused the petition filed by both sides
at this point of discharge the accused along
with the police case records which goes to
show that cases have been pending between
both sides and the accused husband has been
granted anticipatory bail by the Hon’ble High
Court also from perusal of the case record it
appears that during before the charge
evidence, the complainant has adduced the
evidence of four witnesses including the
complainant herself. The evidence recorded
under Section 244 Cr.P.C. is sufficient to
attract the offence of Section 498 A IPC as
against all the four accused persons and thus
there is sufficient materials to frame charge
against accused persons and only submission
of pendency of cases between the parties and

to grant anticipatory bail are not the proper ground of acceptance of accused's discharge petition and hence considering the above facts, the petition of discharge under Section 245 Cr.P.C. stands rejected directing the accused to remain physically present for framing of the charge."

In the opinion of this Court, there cannot be a more mechanical order inasmuch as what has been stated by these witnesses before framing charge so as to constitute the offence under Section 498 A has not even been remotely discussed. True it is, an order rejecting prayer of discharge has not to be a reasoned order by discussing all such plea of the accused taken by way of his defence but then under Section 245 Cr.P.C. there is a clear mandate of legislature with regard to consideration by the magistrate by taking into account all the evidence referred and recorded in terms of Section 244 of the Code of Criminal Procedure. Thus an order of discharge infact has to be passed upon considering all such evidence in the backdrop that they would not be sufficient, even if left un rebutted, to warrant his conviction. Such mandate of legislature, therefore, would require a court while considering petition of discharge to even record reasons in brief for rejecting the prayer of discharge. No such reason



is however discernible from the impugned order.

That being so, the impugned order is hereby set aside and the learned magistrate is directed to reconsider the prayer of discharge of the petitioners in accordance with law.

Kanchan

(Mihir Kumar Jha, J.)

