

IN THE HIGH COURT OF JHARKHAND, RANCHI

Cr.M.P. No. 2627 of 2019

Nilam Sinha, wife of Bijay Kumar aged about 53 years F/o Flat No.202 Om
 Prithavi Vihar, Bekarbandh, PO Dhanbad, P.S Dhanbad. Dist Dhanbad
 Jharkhand Petitioner
 -- Versus --
 The State of Jharkhand and Anr. Opposite Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :- Mr. Rahul Dev, Advocate
 For the State :- Mr. B.N.Ojha, Advocate
 For the O.P.No.2 :- Mr. Ranjeet Kumar Saw, Advocate

5/21.10.2022 This petition has been filed for quashing of the entire
 criminal proceeding as well as the order dated 22.8.2015 passed by the
 court of learned judicial Magistrate, 1st Class, Dhanbad whereby
 cognizance has been taken and summons has been issued against the
 petitioner pending in the court of learned Judicial Magistrate 1st Class,
 Dhanbad.

The learned counsel for the petitioner submits that there is
 allegation against the husband of the petitioner and that too arising out
 of commercial dispute. He submits that in S.A. which has been brought
 on record by way of supplementary affidavit the complainant has clearly
 stated that he has not demanded money from this petitioner who
 happened to be wife of the accused no.1. He further submits that the
 order taking cognizance is also not in accordance with law and what are
 the prima facie materials are not disclosed.

On the other hand, the learned counsel for the O.P.No.2
 submits that the petitioner has also taken Rs.5 lakhs which he has
 disclosed in the counter affidavit. He submits that there is no illegality in
 the impugned order.

The Court has perused the complaint petition and finds that
 there are allegations of transaction with regard to opening of a coal
 depot and for that certain money has been provided by the O.P.No.2 to

the husband of this petitioner. A compromise petition has been filed which is also on record which suggest that accused as well as O.P.No.2 has compromised.

Looking to the cognizance order it transpires that the learned court has taken cognizance however what are the *prima facie* materials in the said order is not disclosed which is one of the criteria for taking cognizance. For order taking cognizance there is no doubt a detailed order is not required to be passed however *prima facie* case is required to be disclosed. Moreover on the solemn affirmation the complainant has clearly stated that he is not demanded money from this petitioner and in the S.A he has disclosed before the Court that he is not remembering that he has issued cheque in the name of the petitioner and her husband or not and considering these aspects of the matter the impugned order is set aside.

The matter is remitted back to the concerned learned court for passing a fresh order in accordance with law.

Interim order stands vacated.

Cr.M.P. No. 2627 of 2019 stands disposed of.

(Sanjay Kumar Dwivedi, J.)

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