

Court No. - 9

Case :- CRIMINAL MISC. WRIT PETITION No. - 17509 of 2021

Petitioner :- Kamla Pati Dwivedi And Ors.

Respondent :- State Of U.P.Thru.Addl.Chief Secy.Home Lucknow And Ors.

Counsel for Petitioner :- Sushil Kumar Singh,Gouri Shanker Singh

Counsel for Respondent :- G.A.,Ganesh Dutt Singh,Radhika Singh,Rishabh Raj

Hon'ble Rajan Roy,J.

Hon'ble Ajai Kumar Srivastava-I,J.

Heard.

By means of this petition, the petitioner has sought quashing of F.I.R. dated 01.08.2021 bearing Case Crime No.0163/2021 for the offence under Sections-323, 147, 498-A, 376 I.P.C. & Section 3/4 of the Dowry Prohibition Act, 1961 registered at Police Station-Hussainganj, District-Lucknow.

Mediation has failed between the parties.

We have perused the contents of the F.I.R. The allegation of rape is against Shivendra Narayan Prasad and not against any of the petitioners. All other offences carry of sentence of seven or less than seven years, therefore, the statutory provision under Section 41A Cr.P.C. is already available to the petitioners as provided by Hon'ble Supreme Court of India in ***Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273***, therefore, the police is obliged to extend the benefit of the said provision wherever attracted and no specific direction is required. If during investigation any other section is added then the law will take its course, meaning thereby, if the provisions contained in Section 41 or 41-A are not attracted to the said offence/ section, then it shall be open for the police to proceed accordingly. In addition to it, if the petitioners so desire, they can move an application for grant of anticipatory bail, if the occasion so arises but we see no reason to quash the F.I.R. at this stage considering its contents. This, of course, is without prejudice to the rights of the petitioners in the pending investigation or to seek such other remedy as may be permissible in law.

Accordingly, we dispose of the petition with liberty as aforesaid.

(Ajai Kumar Srivastava-I,J.) (Rajan Roy,J.)

Order Date :- 19.10.2023

Shanu/-