

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Criminal Miscellaneous No.48780 of 2012

Arising Out of PS.Case No. -null Year- null Thana -null District- -

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1. Ahmad Hussain S/O Late Janam Hussain  
2. Md. Saiful Rahman S/O Ahmad Hussain  
3. Rajausa Khatton W/O Sri Ahmad Hussain, all Resident Of Village- Barari  
Harkesh, Police Station- Uchkagaon, District- Gopalganj

.... .... Petitioner/s

Versus

1. The State Of Bihar  
2. Kamrun Nisha W/O Md. Saiful Rahman And D/O Md. Sadrul Hoda Resident Of  
Village- Rajpur, Police Station- Sabaour, District- Bhagalpur, Presently Residing In  
Mohalla- Tatarpur, Police Station- Tatarpur, District- Bhagalpur

.... .... Opposite Party/s

#### Appearance :

For the Petitioner/s : Ms. Amita Kumari Singh, Advocate

For the Opposite Party/s : Mr. T.N.Thakur, APP

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**CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH**

ORAL JUDGMENT

**Date: 13-07-2015**

The Petitioners seek quashing of the order of cognizance dated 29.10.2012 passed by the Sub Divisional Judicial Magistrate, Bhagalpur in Complaint case No.1628 of 2011.

The case of the Complainant is that she was married to the Petitioner No.2 on 31.5.2009, on which occasion gifts were given to the in-laws. However, she was taunted for inadequate dowry and the in-laws demanded more money. When the demands were not fulfilled she was kept hungry and ousted from the matrimonial home.

It has been submitted on behalf of the Petitioners that fact of the matter is that the Complainant could not settle in the matrimonial home and she left it on her own sweet will. When she refused to return, the Petitioner No.2 filed Matrimonial Suit No.118 of

2012 for restitution of conjugal right before the Principal Judge, Family Court, Gopalganj. Notices had been issued to the Complainant but despite service of notice she did not appear there. The suit was then decided ex-parte on 6.11.2012, which to the knowledge of the Petitioners has not been challenged till date. However, in the meanwhile the present Complaint was filed on 6.9.2011. In this background the Petitioners submit that their prosecution is unwarranted.

However, having considered the case on merits, I am not inclined to entertain the same as regards the Petitioner No.2. It is dismissed with a direction to the Court below to proceed in accordance with law.

As for the Petitioners No.1 and 3, I find that there is no specific overt act alleged against them. In such circumstances, the application, so far as the Petitioners No.1 and 3 are concerned, is allowed and the order of cognizance dated 29.10.2012 passed by the Sub Divisional Judicial Magistrate, Bhagalpur in Complaint case No.1628 of 2011 is hereby set aside.

**(Anjana Prakash, J)**

Narendra/-

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