

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10637 of 2022

Arising Out of PS. Case No.-82 Year-2015 Thana- MAGADH MEDICAL COLLEGE
District- Gaya

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1. ALOK KUMAR S/O SRI BIJENDRA KUMAR SINGH @ BIJENDRA PRASAD R/o Mohalla- Adarsh Vihar Colony, Rukanpur (Danapur), P.S.- Rukanpura, Distt.- Patna
 2. Randheer Kumar @ Randhir Singh S/o Nagendra Singh R/o Village- Kathotiya Kala, P.S.- Maner, District- Patna
 3. Shatrudhan @ Shatrudhan Paswan S/o Mitlal Paswan R/o Mohalla- Rukanpura Mushar Toli, P.S.- Rukanpura, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Alka Kumari D/o Anil Kumar Azad R/o Mohalla- Magadh Colony Chandauti (In the side of Munna Disk), P.S.- Magadh Medical College, District- Gaya

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Sinha, Advocate
For the State	:	Mr. Shailendra Kumar, A.P.P.
For the Informant	:	Mr. Sanjay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

4 06-03-2024 At the very outset, learned counsel for the petitioners seeks permission to withdraw this application in respect of petitioner No.1 with liberty to raise his grievance at an appropriate stage.

2. Permission is accorded.

3. Accordingly, this quashing application is dismissed as against petitioner No.1.

4. So far as petitioner Nos. 2 and 3 are concerned, this application has been filed for quashing the order dated



23.09.2020 passed by learned Additional Chief Judicial Magistrate-IVth, Gaya in connection with Magadh Medical P.S. Case No. 82 of 2015 (G.R. No.3301 of 2015) whereby and whereunder the learned Chief Judicial Magistrate, IVth, Gaya has issued summon against the petitioners in cognizance of offence under Sections 448, 323, 379, 498A, 504, 506/34 of the I.P.C. against the petitioners.

5. That the prosecution case in brief is that on the basis of written report of Alka Kumari given before S.H.O. of Magadh Medical College police station on 03-07-2015 at about 19.00 hours alleging, inter alia, that on same day, i.e., on 03-06-2015 at about 2.30 P.M., informant was sleeping along-with her 4 months old baby and her mother was outside from the house, at that time her husband Alok Kumar, Son of Bijendra Prasad armed with pistol in his hand awoken to informant then first informant saw her baby, thereafter he told with abusing that he will kill the prematurely born baby, because she would not got the share from the property of his father. It is further alleged that thereafter he taken away her newly mobile contents with SIM bearing No. 8252090243 as well as wearing golden ornaments, Gold Chain, Mangalsutra, earring and Bracelet and handed over to his driver Satrudhan resident of Rukanpura



Mushar Toli, and also caused injury on her cheek assault made by but of pistol, and when mother of informant reached then her husband given leg blow and snatched away golden chain from the neck and fled away by his vehicle with threatening that on next time while he came, then he will kill the father and brother of informant, because he would perform another marriage. It is further alleged that prior to this for an occurrence informant and her father had filed informatory petition in the court of learned Chief Judicial Magistrate, Gaya. Marriage was solemnized in the month of May 2014 and on the occasion of marriage Cash Rs. 16,00,000 (Sixteen Lakhs) and one Hyundai, I 10, four wheeler have gifted to him after sold the land. After marriage her father-in-law and husband started to demand of Rs. 3,00,000/- (three lac). It is further alleged that her husband Alok Kumar used to commit such occurrence as per instigation of his mother Shobha Devi, while the informant was in her matrimonial home at Patna, and at that time she was pregnant of 7 months, then her mother-in-law Shobha Devi given her medicine saying to consume it, it is best medicine, and when the informant consume the said medicine, then about two to three hours watery discharge started from her stomach. Thereafter sister of Alok namely Bibha Singh immediately after admitted to



informant at Jyoti Kunj Hospital, given telephonic information to the parents of informant, in the night itself mother of informant reached at Nursing home, thereafter Bibha Singh and her husband went at Kolkata. Father of informant reached and learnt that due to consumption of poisonous medicine watery discharging from uterus, after staying three days at Patna reached at Gaya and her treatment done.

6. The learned counsel for the petitioners submits that petitioner No. 2 is cousin brother of the husband of the informant and petitioner No. 3 is driver of husband of the informant. He submits that police after investigation submitted final form against the petitioners and they were not sent up for trial. As a matter of fact, husband of the informant, co-accused Alok Kumar filed Matrimonial Case No. 753 of 2015 before the Principal Judge, Family Court, Patna under Section 13 of the Hindu Marriage Act for decree of divorce on 02.03.2015 and after the informant came to know about the aforesaid matrimonial case, informant lodged the present case on 03.07.2015 with concocted story. It is next submitted that there is general and omnibus allegation of commission of torture and harassment against these petitioners. It is further submitted that petitioners are living separately and have got no concern with



the affairs of the couple. Petitioners have been made accused in this case merely because they happen to be the relatives of the husband of the informant. On the basis of general and omnibus allegation, continuation of proceedings against these petitioners would amount to abuse of the process of the court. In this connection, learned counsel for the petitioners has placed reliance upon judgment of the Hon'ble Apex court passed in the case of **Preeti Gupta & Anr. Versus State of Jharkhand & Anr. reported in (2010) 7 SCC 667.**

7. On the other hand, learned A.P.P. for the State and learned counsel appearing on behalf of the opposite party no. 2 have opposed the arguments advanced on behalf of the petitioners and submits that petitioners are named in the F.I.R. and they were instrumental in torturing the opposite Party No. 2, both mentally and physically. There is sufficient material on record against them and it cannot be said that *prima facie* no case is made out against these petitioners. Hence, no interference is required by this court at this stage.

8. Therefore, upon consideration of the relevant circumstances, and in light of the law laid down by the Hon'ble Apex Court in the cases of **Preeti Gupta & Anr. Versus State of Jharkhand & Anr. reported in (2010) 7 SCC 667** and



Kahkashan Kausar alias Sonam and others versus State of Bihar and Others reported in (2022) 6 SCC 599, and in absence of any specific role attributed to the petitioners, it would be unjust if the petitioners are forced to go through the tribulations of a trial.

9. In view of the foregoing discussions, order dated 23.09.2020 passed in connection with Magadh Medical P.S. Case No. 82 of 2015 by the Chief Judicial Magistrate, IVth, Gaya, with respect to the petitioner Nos .2 and 3, is hereby quashed.

10. This application is accordingly allowed.

(Prabhat Kumar Singh, J)

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