

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46909 of 2023

Arising Out of PS. Case No.-772 Year-2016 Thana- KATIHAR COMPLAINT CASE
District- Katihar

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1. MD.ASGAR ANSARI @ MD.ASGAR SON OF LATE ANWARUL HAQUE RESIDENT OF RABBANI MASZID, QUARTER, MADUL DANGA, BY LANE, P.O.- GAROLIA, P.S.- NAWAPADA, DISTRICT-NORTH 24 PRAGANA, WEST BENGAL
 2. MD. ASLAM ANSARI @ MD. ASLAM SON OF LATE ANWARUL HAQUE RESIDENT OF RABBANI MASZID, QUARTER, MADUL DANGA, BY LANE, P.O.- GAROLIA, P.S.- NAWAPADA, DISTRICT-NORTH 24 PRAGANA, WEST BENGAL
 3. BIBI NAZMA @ NAZMA KHATOON WIFE OF LATE ANWARUL HAQUE RESIDENT OF RABBANI MASZID, QUARTER, MADUL DANGA, BY LANE, P.O.- GAROLIA, P.S.- NAWAPADA, DISTRICT-NORTH 24 PRAGANA, WEST BENGAL

... .. Petitioner/s

Versus

1. The State of Bihar
2. SAMA KHATOON W/O MD. ASGAR, D/O MD. SAHABUDDIN ANSARI AT PRESENT RESIDENT OF VILLAGE- ROSHNA HAT, P.S.- PRANPUR, DISTRICT- KATIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Om Prakash Singh, Advocate
For the Opposite Party/s : Mr. Aditya Narayan Singh.1, APP

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

- 3 08-04-2024 At the outset, learned counsel for the petitioner s seeks permission to withdraw this application with regard to petitioner No. 1 who is husband of Opposite Party no. 2.
2. Permission is accorded.
- 3 . The quashing petition is dismissed with respect to petitioner No. 1 .
4. Heard learned counsel for the petitioner Nos. 2 and



3 Opposite party No. 2 and the State .

5 . This application has been filed for quashing the order of cognizance order dated 20.02.2017 passed by learned SDJM , Katihar , whereby learned Court has taken cognizance under section 498(A) of the Indian penal Code and section 4 of the D. P Act, against the petitioners in connection with Complaint Case No. CA 772 of 2016 pending before the learned SDJM , Katihar.

6. The prosecution case, in brief, is that the complainant, namely, *Sama Khatoon*, solemnized marriage with co-accused *Md.Asgar Ansari @ Md.Asgar* , and after marriage, her husband along with her in-laws started torturing the complainant for dowry. It is further alleged that the husband of the complainant demanded Rs. 50,000/-, one golden chain and Hero Honda motorcycle but the complainant expressed her inability to fulfill the demand due to poor financial condition of her *Naiher*. Due non fulfillment of demand of dowry , the accused persons in collusion with each other started torturing her both mentally and physically . The husband of the complainant used to assault her by means of fist, slaps . The father of the complainant tried to pacify the matter but all went in vain .



7. Subsequently, Complaint Case No.- 122(C)/2022 dated 24.3.2022 has been instituted against four accused petitioners for the offences under sections- 498(A) of Indian Penal Code & Sections- 3 & 4 of the Dowry Prohibition Act.

8 . While denying the allegations, learned counsel for the petitioners submits that petitioner No. 2 is elder *Bhaisur* and petitioner No. 3 is mother-in-law of the complainant. It is next submitted that the complainant does not disclose any distinct role or contribution of these petitioners in the alleged occurrence and merely on the basis of general and omnibus allegation they have been made accused in this case . They are separate in mess and property and have no concern with the affairs of the couple . 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*.

9. 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



Complaint 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.

10 Having heard the submissions advanced by learned counsel appearing on behalf of the parties and on perusing the materials available on record, and the complaint, it appears that only omnibus allegations have been made by opposite party no.2.

11 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.

12. In view of the foregoing discussions, order dated 20.02.2017 passed by learned SDJM , Katihar , whereby learned Court has taken cognizance under section 498(A) of the Indian



penal Code and section 4 of the D. P Act, against the petitioners in connection with Complaint Case No. CA 772 of 2016 pending before the learned SDJM , Katihar with respect to petitioner Nos. 2 and 3 only is hereby quashed.

13 . This application is accordingly allowed.

(Prabhat Kumar Singh, J)

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