IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51761 of 2023

Arising Out of PS. Case No.-1002 Year-2021 Thana- KHAGARIA District- Khagaria

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1. Sunil Kumar Sinha Son Of Late Brijnandan Prasad Resident Of Baba Vimal Lane, Behind Baglamukhi Mandir, Rambagh Road, P.S. - Musahri, District - Muzaffarpur
2. Kiran Sahay @ Kiran Sinha Wife Of Sunil Kumar Sinha Resident Of Baba Vimal Lane, Behind Baglamukhi Mandir, Rambagh Road, P.S. - Musahri, District - Muzaffarpur

... ... Petitioner/s

Versus

1. The State Of Bihar
2. Shilpi Sinha Wife Of Ashwini Kumar Resident Of Sanhauli, Ward No.8, P.S. - Chitragupt Nagar, District - Khagaria

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Saket Tiwary, Advocate
For the Opposite Party/s : Mr. Ram Sevak Choudhary, A.P.P.
Mr. Shivendra Kumar Sinha, Advocate
Mr. Ranjeet Patel, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL ORDER

3 22-04-2024 Heard the parties.

2. This application has been filed for quashing of the order dated 09.05.2023 passed by learned Chief Judicial Magistrate, Khagaria in Khagaria (Chitragupt Nagar) P. S. Case No. 1002/2021 by which cognizance has been taken against the petitioners under Section 498A of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

3. Prosecution case, in short, is that opposite party no. 2 was married with co-accused Ashwini Kumar and in the year 2015 she came to her husband's flat at Patna and started living

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with him. At the time of marriage her parents gave jewellery worth Rs. 5,50,000/- and other household articles to her husband as gift. It is alleged that after the marriage all the accused persons including these petitioners started torturing the O.P. No. 2 for dowry of Rs. 10 lacs and threatened to divorce her she failed to fulfill the demand of dowry. It is further alleged that O.P. No. 2 also suffered miscarriage as she was administered wrong medicines during her pregnancy.

4. Learned counsel for the petitioners submits that petitioners are *Mausa* and *Mausi* of the O.P. No. 2. It is next submitted that initally the O.P. No. 2 had instituted a complaint case bearing Complaint Case No. 651(C)/2021 which was sent for investigation under Section 156(3) of the Cr.P.C. Police after investigation submitted final form *vide* Final Report No. 269/2022 dated 15.12.2022 and did not sent up the petitioners for trial. However, differing with the same, the learned Chief Judicial Magistrate, Khagaria took cognizance against the petitioners. It is further submitted that whenever any dispute arises in between the husband and the wife, the entire family members are implicated in a mechanical manner and general and omnibus allegations with a view to coerce the husband into submission. He further submits that F.I.R. does not disclose any

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distinct role or contribution of these petitioners in the alleged occurrence. Petitioners are separate in mess and property and are not concerned with the affairs of the couple. Hence, 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**.

5. 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.

6. Having heard the submissions advanced by learned counsel appearing on behalf of the parties and on perusing the materials available on record, and the F.I.R., it appears that only omnibus allegations have been made by O.P. No.2. Neither date

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nor time or place regarding the incident happened with the O.P. No. 2 has been mentioned by her that as and when she was subjected to cruelty and harassment by these petitioners in regard to demand of dowry.

7. 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 & Ors versus State of Bihar & Ors*** 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.

8. In view of the foregoing discussions, order dated 09.05.2023 passed by learned Chief Judicial Magistrate, Khagaria in Khagaria (Chitragupt Nagar) P. S. Case No. 1002/2021 with respect to these petitioners, is hereby quashed.

9. This application is, accordingly, allowed.

(Prabhat Kumar Singh, J)

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