

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68731 of 2022

Arising Out of PS. Case No.-548 Year-2018 Thana- PUPRI District- Sitamarhi

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1. SHAAHBAZ KHAN @ SHAHBAZ Son of Zubair Khan R/v- Gangati, P.S.- Pupri, District- Sitamarhi
 2. IRFANA KHATOON Wife of Llias Khan R/v- Gangati, P.S.- Pupri, District- Sitamarhi
 3. SHABANA KHATOON Wife of Majeed Khan R/v- Gangati, P.S.- Pupri, District- Sitamarhi
 4. KHUSHMU TARA @ KHUSHBU TARA Wife of Zubair Khan R/v- Gangati, P.S.- Pupri, District- Sitamarhi

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Shah Jahan Khatoon Wife of Sadre Alam Khan R/v- Gangati, P.S.- Pupri, District- Sitamarhi

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Abu Nasar, Advocate
For the Opposite Party/s :	Mr. Chandra Sen Prasad Singh, A.P.P.
	Ms. Madhubala Verma, Advocate
	Mr. Ajay Kumar Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

4 25-04-2024 Heard the parties.

2. This application has been filed for quashing the order dated 04.05.2019 by which learned Sub-Divisional Judicial Magistrate, Pupri at Sitamarhi took cognizance against the petitioners under Sections 341, 323, 354, 504/34 of the Indian Penal Code in connection with Pupri P. S. Case No. 548/2018 (T.R. No. 97/2022).

3. Prosecution case, in brief, is that these petitioners



and other accused called her *daain* and assaulted her with fist and slaps and dragged her on the ground. It is further alleged that co-accused Iliyas Khan outraged her modesty and snatched away her *mangalsutra*.

4. It is submitted on behalf of the petitioners that from bare perusal of the impugned order of cognizance, it is apparent that the same has been passed in a mechanical manner without due application of mind. It is next submitted that police after investigation submitted final form against the petitioners and differing with the same the learned court below took cognizance against the petitioners and no reason has been assigned to that effect.

5. Learned counsel for the O.P. No. 2 does not dispute the contention made on behalf of the petitioners.

6. From perusal of the impugned order, it is manifest that the learned Sub-Divisional Judicial Magistrate has not indicated anything in the order as to why he has disagreed with the opinion of the investigating agency. Hon'ble Apex Court in the case of *Minu Kumari & Anr. v. State of Bihar & Ors. reported in (2006) 4 SCC 359* has held that learned court below has to independently apply its mind while differing with the opinion of the investigating agency. No doubt the learned



Magistrate has the jurisdiction to ignore the conclusion arrived at by the Investigating Officer, but the order must indicate at least, *prima facie*, that he has independently applied his mind to take cognizance in respect of certain other persons, who have not been sent up for trial. The order passed the learned Sub-Divisional Judicial Magistrate, as is patent, does not indicate anything of that nature. There is totally non-application of mind. Therefore, the order taking cognizance as far as the present petitioners are concerned deserves to be set aside. The learned Magistrate shall consider the material brought on record and, thereafter, proceed to pass appropriate order as per law.

7. Accordingly, order dated 04.05.2019 passed by learned Sub-Divisional Judicial Magistrate, Pupri at Sitarmarhi in connection with Pupri P. S. Case No. 548/2018 (T.R. No. 97/2022) is, hereby, quashed with respect to these petitioners and the case is remitted to the concerned Magistrate to consider the material afresh and pass appropriate order in accordance with law.

8. This quashing application stands allowed.

(Prabhat Kumar Singh, J)

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