

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 2424 of 2021

1. Sanjay Kumar Dey	
2. Subhash Dey	
3. Rajeshwari Devi @ Raji Dey Petitioners
Versus	
1. The State of Jharkhand	
2. Sumitra Devi Opp. Parties

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Petitioners	: Mr. Kaushik Sarkhel, Advocate
For the State	: Mr. S.K. Tiwari, Special P.P.
For the O.P. No.2	: Mr. Pratiush Lala, Advocate

Order No.12 Dated : 28.02.2023

Instant petition has been filed for quashing of entire criminal proceeding including the F.I.R. being Mahila Thana P.S. Case No.31 of 2021 under Sections 498A, 323, 406, 504, 506, 34 of the I.P.C. and Sections 3 & 4 of Dowry Prohibition Act, 1961 pending in the Court of learned Judicial Magistrate 1st Class, Dhanbad.

2. Written report lodged by Sumitra Devi is the basis of the case. As per the prosecution case, the marriage was solemnized on 02.12.2018 and Rs.2,51,000/- was paid at the time of marriage. She had a physical stay of 7-8 months and thereafter, she was abused and assaulted by her mother-in-law and father-in-law and they instigated her husband to assault her. She was also locked in a room and denied food. On December, 2019, all the three abused her in presence of her parents and demanded Rs.1,00,000/- and threatened her with life. She became pregnant but harassment continued unabated. After birth of child, she was taken by them but all the three started assaulting her. On 26.05.2021, her children was taken away. On similar allegation, written report was lodged. The present petition has been filed for quashing of the F.I.R.

3. It is submitted by the learned counsel on behalf of petitioners that earlier a complaint was filed being Complaint Case No.1684 of 2021 by the complainant- Sumitra Devi on 31.07.2021. In this case, proceeding has been stayed under Section 210 of the Cr.P.C. It is submitted by the learned counsel that filing of the complaint case has been suppressed in the instant petition and that earlier this petitioner No.1 had filed suit being Original Suit No.251 of 2021 under Section 9 of the Hindu Marriage Act in which suit was decreed by order dated 06.02.2023. Opposite party No.2 has also lodged a case under

Section 125 of the Cr.P.C. in which agreement was entered between both sides and in compliance of the settlement, Rs.85,000/- was deposited. No preliminary enquiry has been allowed in view of ratio decide in the case of ***Lalita Kumari Versus Government of U.P. & Others; (2008) 14 SCC 337.*** Reliance has been placed on ***Varun Goenka Versus State of West Bengal & Another; C.R.R. No.1383 of 2021*** wherein direction has been given for conducting preliminary enquiry before registration of F.I.R. Reliance has also been placed on ***Ruchi Agarwal Versus Amit Kumar Agrawal & Others; (2005) 3 SCC 299.*** It is submitted that on similar facts, Hon'ble Supreme Court has quashed the criminal proceeding.

4. Learned A.P.P. assisted by the learned counsel on behalf of O.P. No.2 have opposed the quashing petition. It is submitted that there is a history of harassment and cruelty against the informant for which she had earlier filed a complaint case later was constrained to lodge a criminal case on new facts. The complaint case has been stayed and the investigation in police cases is in progress.

5. The petitioners have invoked the extraordinary jurisdiction of this Court for quashing the FIR which prima facie discloses offence of subjecting the informant to cruelty. The FIR cannot be quashed at this stage merely on the ground that preliminary enquiry was not conducted by the police or by considering the defence of the petitioners that earlier a suit for restitution of conjugal right was filed and decreed. The directions for holding preliminary enquiry is not mandatory and the object is only to ascertain whether a prima facie case of cognizable offence is made out or not. If prima facie case is disclosed, failure to hold preliminary enquiry cannot be basis for quashing a FIR. Hon'ble Supreme Court has held in ***State of Telangana Vs. Managipet, 2019 SCC online SC 1559*** that the direction for preliminary enquiry in *Lalita Kumari* case (supra) is not mandatory and the scope and ambit of it being necessary before lodging an FIR would depend upon the facts of each case.

Instant criminal miscellaneous petition is devoid of any merit and is accordingly dismissed. I.A., if any, is disposed of.

(Gautam Kumar Choudhary, J.)