

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Cr.M.P. No. 1348 of 2021**

1. Suresh Sahu, aged about 31 years, son of Shiva Sahu
2. Shiva Sahu, aged about 58 years, son of Budhu Sahu
3. Sonamati Devi, aged about 53 years, W/o Shiva Sahu  
 All are resident of village Hundra Toli, P.O. & P.S. Gumla, District-Gumla  
 ... **Petitioners**

**-Versus-**

1. The State of Jharkhand
2. Ranhi Devi, W/o Suresh Sahu, D/o Jagatpal Ohdar, resident of village-Pantha Basia, P.O. & P.S. Basia, District- Gumla ... **Opposite Parties**

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioners : Mr. Arun Kumar, Advocate  
 For the Opposite Party-State : Mr. Vineet Kumar Vashistha, A.P.P.

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03/11.08.2021. Heard Mr. Arun Kumar, learned counsel for the petitioners and Mr. Vineet Kumar Vashistha, learned A.P.P. for the opposite party-State.

2. This criminal miscellaneous petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard on merit.
3. The petitioners have filed this petition for quashing of entire criminal proceeding including the order taking cognizance dated 03.04.2021 passed by the learned Chief Judicial Magistrate, Gumla in G.R. No.307 of 2021 (Gumla P.S. Case No.354 of 2020) by which the learned court below has taken cognizance for the offence under Sections 341/323/307/498(A) of the Indian Penal Code and process has been issued against the petitioners.
4. The prosecution case has been lodged on the basis of the complaint petition filed by the informant/opposite party no.2 before the learned court

below stating therein that she was married with petitioner no.1 on 15.04.2019 as per Hindu rites and rituals. After marriage, opposite party no.2 live in her matrimonial house for six months, thereafter, she was tortured by the petitioners by saying that she belongs from pauper family and she is a Bajhin (issueless) lady. In the month of April, the petitioners assaulted opposite party no.2 and ousted her from the house, as such a Panchayati was held in the village, but the matter was not settled. Thereafter, opposite party no.2 made a complaint to the Superintendent of Police, Gumla, who referred the matter to the Mahila Police Station, where both the parties were called and settled the dispute and thereafter the petitioners had taken opposite party no.2 to the house, but after one week, they again started torturing upon the victim and on 13.08.2020 after some altercation mother-in-law (petitioner no.3) started strangulation upon the victim and petitioner nos. 1 and 2 assaulted upon her. However, on hulla people of nearby came and save her and took her hospital for her treatment. The aforesaid complaint petition was referred to the concern police station by the learned court below for registering the F.I.R. under the provision of Section 156(3) Cr.P.C. and investigation over the matter, accordingly the F.I.R. has been registered against the petitioners for the offence under Sections 341/323/307/498(A) of the Indian Penal Code and after investigation, cognizance has been taken vide order dated 03.04.2021.

5. Mr. Arun Kumar, learned counsel for the petitioners submits that the petitioners have not committed such offence, as alleged against them and in spite of that, cognizance has been taken against the petitioners. He further submits that the case under Section 498(A) of the Indian Penal Code is not made out against the petitioners and Sections 307 of the Indian Penal Code

is also not attracted as injury report is not serious in nature. He also submits that the case of the petitioners is fully covered in light of the judgment rendered by the Hon'ble Supreme Court in the case of **Priyanka Srivastava and another v. State of Uttar Pradesh and others**, reported in **(2015) 6 SCC 287**.

6. On perusal of the complaint petition on the basis of which the F.I.R. has been lodged, it transpires that there are sufficient materials on the record and there are allegations against the petitioners. The injury report dated 13.08.2020 is also on the record. In the cognizance order, the trial court has applied its mind and the cognizance was taken after perusing the charge-sheet, case records and case diary. The *mens rea* can only be decided at the time of trial and not at the stage of issuing summons. When prosecution relies upon the materials, strict standard of proof is not to be applied at the stage of issuance of summons nor to examine the probable defence which the accused may take. All that the Court is required to do is to satisfy itself as to whether there are sufficient grounds for proceeding. Before summoning the accused, the facts stated will have to be accepted as they appear on the very face of it. For issuance of process against the accused, it has to be seen only whether there is sufficient ground for proceeding against the accused and the Court is not required to weigh the evidentiary value of materials on record. The Court is not to examine the merits and demerits of case and not to determine the adequacy of evidence for holding the accused guilty at the time of taking cognizance. These are the subject matters of the trial. This aspect of the matter has been considered by the Hon'ble Supreme Court in the case of **State of Gujarat v. Afroz Mohammed Hasanfatta**, reported in **2019 (2) JLJR (SC) 163**.

Paragraphs 35, 37, 43, 47 and 48 of the said judgment are quoted herein below:

**"35.** Whether the statement of Prafulbhai Patel is in the nature of hearsay and whether it is supported by 'contemporaneous exposition' and whether it would fall under 'res gestae' and whether it is admissible or not is to be seen only at the time of trial. We are not inclined to go into the merits of the contention of either party as the same is to be raised and answered only at the time of trial. Observing that before summoning the accused, the facts stated will have to be accepted as they appear on the very face of it, in Bhaskar Lal Sharma, it was held as under:-

"11. ....The appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence."

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**37.** For issuance of process against the accused, it has to be seen only whether there is sufficient ground for proceeding against the accused. At the stage of issuance of process, the Court is not required to weigh the evidentiary value of the materials on record. The Court must apply its mind to the allegations in the charge sheet and the evidence produced and satisfy itself that there is sufficient ground to proceed against the accused. The Court is not to examine the merits and demerits of the case and not to determine the adequacy of the evidence for holding the accused guilty. The Court is also not required to embark upon the possible defences. Likewise, 'possible defences' need not be taken into consideration at the time of issuing process unless there is an ex-facie defence such as a legal bar or if in law the accused is not liable.

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**43.** The learned counsel for the State submitted that there is a clear evidence of flow back of Rs.16,00,00,000/- to the account of respondent as commission from the company controlled by Madanlal Jain which has not been explained. Insofar as the receipt of over Rs.16,00,00,000/- "as commission" by the respondent-accused for his role in the scam, the learned Single Judge discarded the same on the erroneous ground that "there is no mens-reas or culpable knowledge on the part of the accused". Whether the accused-respondent had mens-reas or not is not to be established at the stage of issuance of summons. In *Bholu Ram v. State of Punjab and Another*, (2008) 9 SCC 140, this Court held that mens rea can only be decided at the time of trial and not at the stage of issuing summons.

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**47.** *The learned Single Judge in the impugned order extensively extracted statement of the witnesses viz. Jafar Mohammed, brother of respondent, Samir Jiker Gohil, Manager of Nile Industries and other witnesses of Angadias Firms, concluded that none of the statements allege anything incriminating against the respondent. The learned Single Judge further observed that " neither the angadiyas nor the cheque discounters who admittedly were recipients of huge cash payments for further transfer to other companies, alleged any dealing or transaction with the petitioner, much less any incriminating transaction". There was huge flow of money into the account of the respondent and Nile Trading Corporation and also to his brother Jafar Mohammed. During trial, it is for the prosecution to show how these money transactions are linked to establish that the respondent was collecting money from remitters and transmitting the same to Prafulbhai Patel through Angadias. At the stage of issue of process, the court is not required to go into the merits of the evidence collected and examine whether they are incriminating the accused or not.*

**48.** *The learned Single Judge extracted the statement of Angadias in extenso and observed that the representatives of S. Babulal Angadia and P. Umeshchandra whose names are appearing in the statements of Prafulbhai Patel also did not reveal any such transaction with the respondent herein. Likewise, the learned Single Judge also referred to the banking transactions and observed that the bank statements of the respondent and his brother do not show commission of any offence lodged against the respondent even on *prima facie basis*. As discussed earlier, at the stage of issuance of process, sufficiency of evidence or otherwise is not to be seen. Meticulous consideration of the statement of witnesses and other materials produced is unfolded. The above materials produced by the prosecution ought not to have been brushed aside by the learned Single Judge to quash the order of issuance of summons to the respondent-accused. As to whether these evidence are sufficient to sustain the conviction of the respondent-accused or whether he has a plausible defence or explanation is the matter to be considered at the stage of trial. The learned Single Judge ought not to have weighed the merits of the case at the initial stage of issuance of summons to the accused."*

7. In view of the aforesaid facts, no relief can be extended to the petitioners. Accordingly, this criminal miscellaneous petition stands dismissed.

**(Sanjay Kumar Dwivedi, J.)**

Ajay/