

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55464 of 2021

Arising Out of PS. Case No.-304 Year-2016 Thana- SHEKHPURA District- Sheikhpura

1. Nand Kishore Pandit Son Of Shree Kameshwar Pandit Resident of Basant Vihar Colony, Near-Zero Mile, P.S.- Zero Mile, District- Bhagalpur
2. Pramila Kumari Wife Of Nand Kishore Pandit Resident of Basant Vihar Colony, Near-Zero Mile, P.S.- Zero Mile, District- Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Govt. of Bihar Patna Bihar
2. The Station House Officer of Police Station Shekhpura, District- Shekhpura Bihar
3. Upendra Prasad S/o Jagdish Mahto R/o Mohalla- Hsanganj, P.S. and District- Shekhpura

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Avanindra Kumar Jha, Adv. with Mr. Purushattam Kumar Jha, Adv. and Mr. Anand Tiwari, Adv.
For the Opposite Party/s :		Mr. Ajay Kumar No. 2, APP
For the O.P. No. 3	:	Mr. Sheo Nandan Prasad, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

5 17-11-2022 Heard learned counsel for the petitioners, learned A.P.P. for the State and learned counsel for complainant-cum-informant.

The present application has been filed for quashing of the part of the cognizance order dated 02.12.2019 passed by the Court of C.J.M. Sheikhpura in connection with Sheikhpura P.S. Case No. 304 of 2016 (G.R. No. 1195 of 2016) arising out of Complaint Case No. 305(C) of 2016 by which cognizance has been taken under Section 120(B), 406, 424, 467, 468 and 469 of

I.P.C.

Learned counsel for the petitioners submit that present application is being filed for quashing of the above said cognizance order on the ground that taking cognizance against the present petitioners are nothing but abuse to the process of the Court and, therefore, he seeks intervention of this Court using the inherent power. Counsel for the petitioners submit that Annexure-2 is the F.I.R., Sheikhpura P.S. Case No. 304 of 2016 lodged under Sections 120(B), 406, 424, 467, 468, 469 has arisen by virtue of Complaint Case No. 305(C) of 2016 lodged under Section 156(3) of Cr.P.C.

Learned counsel for the petitioners submit that from the contents of the complaint petition, there is no material available against the petitioners by which it transpires that there is involvement of present petitioners in the alleged offence. Counsel further submits that after lodging the F.I.R., investigation has been made by the police and in the investigation also, ingredient of those offences in which cognizance has been taken have not come. He further submits that petitioner no. 1 is an old aged person of 52 years and petitioner no. 2 is a lady. There is no material which constitute offence against the present petitioners are available in the case diary and without any material, cognizance has been taken which is basically nothing but the abuse to the process of the

Court.

Learned counsel for the State submits that the said cognizance has been taken by virtue of considering the charge sheet and the case diary relating to the present case. Court has observed that on the basis of finding and diary, cognizance has been taken against 3 accused persons. Learned counsel for the informant appeared in this case and vehemently opposes the prayer of petitioners submitting therein that after bare reading of the F.I.R., there is specific allegation against the petitioner no. 2 that she has collected Rs. 80,000/- as first installment which has been received by petitioner no. 2 and not only that she has convinced by virtue of stating that she is also a Government Teacher and involved in filling the forms of different students in the Bhagalpur.

Learned counsel for O.P. No. 2 also submits that the cognizance order against the petitioners may not be treated as bad due to the reason that there is already alternative remedy available to the petitioners by way of filing discharge petition in this case at appropriate stage.

Upon hearing, the submissions from both the sides and as well as of the A.P.P., I have minutely perused the complaint petition and found that there is material against petitioner no. 2 in this case, particularly, narrated in paragraph 4 of the complaint petition and in this regard, materials have come

in the case diary but so far as the petitioner no. 1 is concerned, there is absolutely no allegation against him. In the case diary also, there is no material found against petitioner no. 1. This is a case of 2016. Cognizance has been taken in the year 2019 and presently, it is 2022 going on. As such, I am of the view that continuation of the name of petitioner no. 1 in this case shall be the abuse of the process of the Court and hence, I am hereby partly setting aside the order of cognizance dated 02.12.2019 passed in Sheikhpura P.S. Case No. 304 of 2016 (G.R. No. 1195 of 2016). It is hereby quashed so far as relating to the petitioner no. 1 is concerned and against the rest accused persons, this case shall continue.

But liberty is always there that the other co-accused persons may seek there remedy of discharge at appropriate stage in this case.

With this direction, this application is partly allowed.

(Dr. Anshuman, J.)

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