

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.22669 of 2015

Arising Out of PS. Case No.-809 Year-2005 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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1. Sarfaraj Khan
 2. Munna Khan
 3. Martban Khan
 4. Biru Khan All Sons of Sarfuddin Khan
 5. Raushan Khatoon w/o Islamul Haque Khan d/o Sarfuddin Khan
 6. Lahmina Khatoon w/o Jamal Nasir d/o Sarfuddin Khan
 7. Reshma Khatoon w/o Abdul Rab Khan d/o Sarfuddin Khan
 8. Sarfuddin Khan son of Late Mahmud Khan
 9. Mustri Khatoon w/o Sarfuddin Khan All residents of Mohalla Milki, P.O. Piro, Police Station - Piro, District - Bhojpur, Ara.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Hasan Nayeem Khan son of Late Abdul Latif Khan Resident of village - Baradih, Police Station - Agrer, District - Rohtas, Sasaram.

... .. Opposite Party/s

Appearance :

For the Petitioners : Mr. Rajiva Ranjan, Advocate
For the Opposite Parties : Mr. Umeshanand Pandit, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 13-02-2023 At the outset, learned counsel for the petitioners submits that petitioners no. 8 and 9 have died. Therefore, he wants to withdraw this application on behalf of petitioners no. 8 and 9.

Permission is granted.

It is, accordingly, dismissed as withdrawn.

Heard learned counsel for the petitioners and learned APP for the State.



Learned counsel for the petitioners is permitted to remove defect(s), as pointed out by the office, if any, within a period of four weeks from today.

The present application has been filed for quashing the order dated 09.01.2006 passed by learned S.D.J.M, Rohtas at Sasaram in Complaint Case No.- 809 C/of 2005, by which the cognizance has been taken against the petitioners for the offence under Section 498A of the I.P.C.

Learned counsel for the petitioners further submits that petitioners no. 1 to 4 are the brothers-in-law (Dewars) and petitioners no. 5, 6 and 7 are the sisters-in-law (married nanads) and there is general and omnibus allegation against the petitioners no. 1, 2, 3, 4, 5, 6 and 7 in the complaint.

The petitioner has also relied upon the judgment of Hon'ble Supreme Court in the case of ***Kahkashan Kausar @ Sonam Vs. State of Bihar*** reported in ***2022 SCC OnLine SC 162***.

I have considered the submissions of the parties. So far as the allegations against the petitioners are concerned, they are general and omnibus.

The learned APP for the State submits that the petitioners may be directed to raise all the points at the time



of framing of charge. This objection is also fit to be rejected in view of the judgment of Hon'ble Supreme Court passed in the case of **Ashok Chaturvedi & Ors Vs Shitul H. Chanchani & Anr** reported in **(1998) 7 SCC 698**. The Hon'ble Court in paragraph No. 5 has held as follows:-

“5. But the question that yet remains for consideration is whether the allegations made in the petition of complaint together with statements made by the complainant and the witnesses before the Magistrate taken on their face value, do make the offence for which the Magistrate has taken cognizance of? The learned counsel for the Patna High Court CR. MISC. No.22351 of 2018(5) dt.13-03-2023

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respondent in this connection had urged that the accused had a right to put this argument at the time of framing of charges, and therefore, this Court should not interfere with the order of the Magistrate taking cognizance, at this stage. This argument, however, does not appeal to us inasmuch as merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Criminal Procedure Code, he is debarred from approaching the court even at an earliest point of time when the Magistrate takes cognizance of the offence and summons the accused to appear to contend that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition. It has been held in a number of cases that power under Section 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of court, and therefore, there cannot be any dispute that in such case power under Section 482 of the Code can be exercised. Bearing in mind the parameters laid down by this Court in several decisions for exercise of power under Section 482 of the Code, we have examined the allegations made in the complaint petition and the statement of the complainant and the two other witnesses made on oath before the Magistrate. We are clearly of the opinion that the necessary ingredients of any of the offences have not been made out so far as the appellants are concerned. The petition of complaint Patna High Court CR. MISC. No.22351 of 2018(5) dt.13-03-2023

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is a vague one and excepting the bald allegation



that the shares of the complainant have been transferred on forged signatures, nothing further has been stated and there is not an iota of material to indicate how all or any of these appellants are involved in the so-called allegation of forgery. The statement of the complainant on oath as well as his witnesses do not improve the position in any manner; and therefore, in our considered opinion, even if the allegations made in the complaint petition and the statement of the complainant and his witnesses are taken on their face value, the offence under Sections 406, 420, 467, 468 and 120-B of the Penal Code, 1860 cannot be said to have been made out. This being the position, the impugned order of the Magistrate taking cognizance of the offence dated 5.2.1996 so far as it relates to the appellants cannot be sustained and the High Court also committed error in not invoking its power under Section 482 of the Code. In the aforesaid premises, the impugned order of the High Court as well as the order of the Magistrate dated 5.2.1996 taking cognizance of the offence as against the appellants stand quashed."

In view of the law laid down by the Hon'ble Supreme Court in the case of ***Kahkashan Kausar Sonam and Ors (supra)*** and ***Ashok Chaturvedi & Ors (supra)***, this application is allowed.

The order dated 09.01.2006 passed by learned S.D.J.M, Rohtas at Sasaram in Complaint Case No.- 809 C of 2005 against of petitioners is hereby quashed.

(Sandeep Kumar, J)

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