

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32099 of 2015

Arising Out of PS. Case No.-30 Year-2013 Thana- MAHILA P.S. District- Saran

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1. Vickky Prasad son of Shri Madhusudan Prasad
 2. Deasy Devi wife of Shri Vickky Prasad
 3. Madhusudan Prasad son of Jug Lal Shah
 4. Lal Pari Devi wife of Shri Madhusudan Prasad
 5. Amit Kumar Prasad@Amit Prasad @Amti Kumar Son of Shri Madhusudan Prasad
 6. Gunjan devi wife of Shri Amit kumar Parasad All are resident of village New basti House Chapra, P.S. Chapra Town Distt Saran.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Babi Devi wife of Shri Munna Prasad @Mahadev Prasad Resident of Village mauna, ps./chapra town, distt- Saran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Deepak Kumar
For the Opposite Party/s : Mr. Sanjay Kumar Pandey APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 17-02-2023 Heard learned counsel for the petitioners and learned
APP for the State.

The present application has been filed for quashing the cognizance order dated 16.06.2015 passed by learned C.J.M, Chhapra in connection with Mahila P.S. Case No. 30 of 2013 by which the cognizance has been taken against the petitioners for the offence under Section 498A of the I.P.C and Section 3/4 of Dowry Prohibition Act.



The prosecution story in short is that Guriya Devi, who is daughter of the complainant Babi Devi was married to one Duglas Kumar on 09.12.2011 and soon after marriage when she went to her sasural, accused persons started demanding Rs. 2,00,000/- and a Motorcycle and when she apprised her inability in fulfilling the demand, she was subjected to torture and harassment.

Learned counsel for the petitioners submits that petitioner no. 1 (Vickky Prasad) is the brother-in-law, petitioner no. 2 (Deasy Devi) is the sister-in-law, petitioner No. 3 (Madhusudan Prasad) is the father-in-law, petitioner no. 4 (Lal Pari Devi) is the mother-in-law, petitioner No. 5 (Amit Kumar Prasad @ Amit Prasad @ Amit Kumar) is the brother-in-law and petitioner No. 6 (Gunjan Devi) is the sister-in-law and there are general and omnibus allegations against the petitioner Nos. 1, 2, 3, 4, 5 and 6 in the complaint.

Learned counsel for the petitioners has also relied upon the judgment of Hon'ble Supreme Court in the case of ***Kahkashan Kausar and Ors Vs State of Bihar and Ors*** reported in ***AIR 2022 SC 820***.

The learned APP has submitted that the application of the petitioners may be dismissed and the petitioners may also be



directed to raise all their grievances in the Court below at the time of framing of charge.

I have considered the submissions of the parties. So far as the allegations against the petitioner Nos. 1, 2, 3, 4, 5 and 6 are concerned, they are general and omnibus.

So far as the objection of learned APP for the State that the petitioners may be directed to raise all their grievances at the time of framing of charge is concerned, 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 Apex 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 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 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 and Ors (supra)*** and ***Ashok Chaturvedi & Ors (supra)***, this application is allowed.

Accordingly, the order dated 16.06.2015 passed by learned C.J.M, Chhapra in connection with Mahila P.S. Case No. 30 of 2013 by which the cognizance has been taken against petitioner Nos. 1 to 6, is hereby quashed.

(Sandeep Kumar, J)

Vikas/Shishir

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