

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35126 of 2015

Arising Out of PS. Case No.-2066 Year-2013 Thana- NAWADAH COMPLAINT CASE
District- Nawada

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1. Pintu Kumar and Ors Son of Mohan Mahto,
 2. Sharwan Kumar, Son of Mohan Mahto,
 3. Lalan Kumar, Son of Mohan Mahto,
 4. Mohan Mahto, Son of Late Baleshwar Mahto,
 5. Mano Devi, W/o Mohan Mahto, All resident of village - Chandi Bindabad, P.S. - Ariyari, District - Sheikhpura.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Puja Bharti, Wife of Sanjay Kumar, D/o Ramswaroop Mahto, Resident of village - Chandi Bindabad, P.S. - Ariyari, District - Sheikhpura. At present Ghostama, P.S. and District - Nawada.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Pramod Kumar Verma
For the Opposite Party/s : Mr.Manoj Kumar App

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 28-04-2023 Learned counsel for the petitioner seek permission to
withdraw this application on behalf of the petitioner no. 4 and 5.

Permission is granted.

Accordingly, the application on behalf of the
petitioner no. 4 and 5 is dismissed as withdraw with liberty to
the petitioner no. 4 and 5 to raise all her grounds at the stage of
framing of charge.

This application is being filed for quashing of the
order dated 04.03-2014 passed by the learned Sub-divisional



Judicial Magistrate, Nawada in Complaint Case No. 2066 of 2013 whereby and where under the learned Sub-Divisional Judicial Magistrate, Nawada has taken cognizance under sections 498(A) of the Indian Penal Code and 4 of the Dowry Prohibition Act.

The prosecution in short is that the complainant (Puja Bharti) was married to Sanjay Kumar. On the day of marriage accused Manoj Mahto told his son Sanjay Kumar not to perform Sindur Dan and demanded Rs. 60,000 for purchasing a Motorcycle. Thereafter, complainant's father gave Rs. 50,000 and then accused Sanjay Mahto performed the customs of Sindur Dan. On the next day, the complainant went to sasural where her in-laws started torturing her and also used abusive words saying Kali-Kaluti and daughter of a beggar. Due to continuous torture, she came to her Maik. The accused person did not even try to take her back. In Panchayati as well as by the pressure of villagers, the accused Sanjay Kumar and his parents were ready to keep the complainant. But again they started torturing her in various ways. When the complainant's father went to sasural to see his daughter, she was very weak and when he asked this from the accused persons they started abusing and assaulting to the complainant's father. When Puja Bharti opposed this then



Sanjay Kumar caught her hair-lock and thrashed her on the ground and tried to kill her. On making hulla, villagers came and saved her. It is also alleged Mannu Devi and Lalan Kumar committed theft of all ornaments after breaking the law and pushed out the complainant and her father from the house.

Learned counsel for the petitioners also submits that petitioner No. 1 (Pintu Kumar), petitioner No. 02 (Sharwan Kumar) and petitioner no. 3 (Lalan Kumar) all are Devars of Opposite Party No. 02 and there are general and omnibus allegations against all the petitioners.

However, learned counsel for Opposite party no. 2 has vehemently opposed the prayer of quashing application.

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 petitioners may also be directed to raise all the 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 petitioners 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 the points at the time of framing of charge is 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 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 04.03.2014 passed by Sub-Divisional Judicial Magistrate, Nawada in Complaint Case No. 2066/2013 is hereby quashed.

(Sandeep Kumar, J)

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