

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65201 of 2018

Arising Out of PS. Case No.-477 Year-2017 Thana- SHASTRINAGAR District- Patna

1. Rishikesh Priyadarshi @ Rishikesh Priyadarshy and Ors S/o Harendra Mohan Sinha
2. Harendra Mohan Sinha S/o Late Surendra Prasad Sinha
3. Harshkesh Priyadarshi @ Harsh Priyadarshy S/o Harendra Mohan Sinha null
4. Usha Sinha W/o Harendra Mohan Sinha
5. Sangita Priyadarshy W/o Harshkesh Priyadarshy @ Harsh All are R/o Flat No.104-D, D Block,Sarda Lok Apartment,Gandhi Path,Nehru Nagar,P.S. Patliputra,Distt.-Patna

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Pragati Sinha W/o Rishikesh Priyadarshi D/o Purnedu Kumar Sinha At Present Address 88/A. C.D.A. Colony7, Shastri Nagar,P.S. Shastri Nagar,Distt.-Patna-23

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Radha Mohan Pathak
For the Opposite Party/s : Mr.Dr. Rabindra Kumar

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 06-07-2023 Learned counsel for the petitioners seeks permission to withdraw this application on behalf of the petitioner no. 1, 2 and 4.

Permission is granted.

Accordingly, the application on behalf of the petitioner no. 1, 2 and 4 is dismissed as withdrawn with liberty to the petitioner no. 1, 2 and 4 to raise all her grounds at the stage of framing of charge.

Heard learned counsel for the petitioners and learned



APP for the State.

The present application has been filed on behalf of the petitioners for quashing the order dated 27.06.2018 passed by learned Chief Judicial Magistrate-IV, Patna in connection with Shastrinagar P.S. Case No. 477/2017 under Section 498(A) of Indian Penal Code and 3/4 of Dowry Act.

The prosecution story in brief is that the informant namely Pragati Sinha was married to Rishikesh Priyadarshi. After marriage her in-laws and husband started demanding dowry. Due to non fulfillment of demand they started abusing and assaulting the informant.

Learned counsel for the petitioners also submits that petitioner No. 3 is Brother-in-Law (Bhaisur) and petitioner No. 5 is Sangita Priyadarshi (Gotni) have general and omnibus allegations.

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 be-



low 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.

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 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 27.06.2018 passed by learned Chief Judicial Magistrate-IV, Patna in connection with Shastrinagar P.S. Case No. 477/2017 is hereby quashed.

Proceeding against Petitioner Nos. 1, 2 and 4 shall continue.

(Sandeep Kumar, J)

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