

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18747 of 2014

Arising Out of PS. Case No.-937 Year-2012 Thana- NAWADAH COMPLAINT CASE
District- Nawada

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1. Mosmat Sonwa Devi @ Sonarwa Devi and Ors. Wife of Late Saryu Mahto
 2. Pawan Kumar Son of Late Saryu Mahto
 3. Smt Shakuntla Devi Wife of Pawan Kumar All r/o Village and P.O. - Lond Bigha, P.S. Sirdala, District Nawada

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Mamta Devi Wife of Pankaj Kumar , D/o Naresh Prasad All r/o Village and P.O. - Lond Bigha, P.S. Sirdala, District Nawada, presently residing at village - Bhagwanpur, P.S. Mufassil, District Nawada

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bipin Kumar
For the Opposite Party/s : Mr. Rajendra Pd.Nat app

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 23-02-2023 At the outset, learned counsel for the petitioners submits that petitioner no. 1 has died. Therefore, he wants to withdraw this application on behalf of petitioner no. 1.

Permission is granted.

It is, accordingly, dismissed as withdrawn.

This application has been filed for quashing the order dated 13.09.2012 passed by the Sub-Divisional Judicial Magistrate, Nawada by which the learned Court below has taken cognizance in connection with complaint Case No. 937 of 2012.



Learned counsel for the petitioners submits that petitioner No. 02 (Pawan Kumar) is the brother-in-law (Bhaisur), petitioner No. 03 (Smt. Shakuntala Devi) is the sister-in-law (Gotni) and there are general and omnibus allegations against the petitioner Nos. 2 and 3 in the complaint and he further submits that Opposite Party No. 2 has re-married.

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 shall 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. 2 and 3 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 Apex 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 13.09.2012 passed by the Sub-Divisional Judicial Magistrate, Nawada by which the learned Court below has taken cognizance in connection with complaint Case No. 937 of 2012, is hereby quashed.

(Sandeep Kumar, J)

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