

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43329 of 2019

Arising Out of PS. Case No.-97 Year-2016 Thana- KUMAR KHAND District- Madhepura

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1. DOLY KUMARI S/o Late Neti Prasad Yadav Resident of Village-Kumarkhand, P.S-Kumarkhand, District-Madhepura.
 2. Baby Kumari @ Baby Devi D/o Nand Kishore Yadav Resident of Village-Kumarkhand, P.S-Kumarkhand, District-Madhepura.
 3. Ranjan Kumari D/o Nand Kishore Yadav Resident of Village-Kumarkhand, P.S-Kumarkhand, District-Madhepura.
 4. Chandan Kumari @ Chandan Devi D/o Nand Kishore Yadav W/o Dilip Kumar Resident of Village-Raghunathpur, Block and P.S-Bhargama, District-Araria.
 5. Nand Kishore Yadav S/o Late Neti Prasad Yadav Resident of Village-Kumarkhand, P.S-Kumarkhand, District-Madhepura.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR Bihar
2. Ranu Devi W/o Bed Prakash Babloo D/o Rajendra Pd. Yadav Resident of Village-Raghunathpur Panchayat-Baghaili, P.S.-Jadiya, District-Supaul.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Kumar Vishoka Nand
For the Opposite Party/s : Mr.Mukeshwar Dayal

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 05-04-2023 Learned counsel for the petitioners seek permission to
withdraw this application on behalf of the petitioner no. 5.

Permission is granted.

Accordingly, the application on behalf of the
petitioner no. 5 is dismissed as withdrawn with liberty to the
petitioner no. 5 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 10.01.2019 passed by Sub-Divisional Magistrate, Madhepura in connection with Kumarkhand P.S. Case No. 97/2016 under Section 498(A)/34 Indian Penal Code and 3/4 of Dowry Act and G.R. No. 1043/2016 and CIS No. 1601/2016 and Tr. No. 637/2019 whereby and where under cognizance has been taken against the petitioners under Section 498A, 323, 504 of the I.P.C. and ¾ of the Dowry Act.

The prosecution story in brief is that the informant namely Ranu Devi was married to Bed Prakash Babloo five years ago. One child was born out of their wedlock who is five years old. After four years of marriage her in-laws and husband started demanding five lakhs and one Alto car as dowry. Due to non fulfillment of demand they started abusing and assaulting the informant. In-laws and her husband entered her room with matchbox, and hard blunt substance tried to kill her by sprinkling kerosene oil. They tried to set her ablaze. On raising alarm neighbours came and saved her.

Learned counsel for the petitioners also submits that



petitioner No. 1 (Doly Kumari), petitioner No. 02 (Baby Kumari) and petitioner no. 3 (Ranjan Kumari) and petitioner no. 4 (Chandan Kumari), all are Nanads 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.

The objection of learned APP for the State that the petitioners may be directed to raise all the grounds at the stage of framing of charge 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 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 10.01.2019 passed by Sub-Divisional Magistrate, Madhepura in connection with Kumarkhand P.S. Case No. 97/2016 s hereby quashed.

(Sandeep Kumar, J)

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