

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 37710 of 2018

Arising Out of PS. Case No.-184 Year-2018 Thana- SIWAN CITY District- Siwan

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1. Anil Gupta and Ors son of Shri Nawal Kishore Gupta
 2. Anita Gupta @ Anita Devi wife of Sri Anil Gupta Both residents of Mohalla Siwaipatti, P.O. and P.S. Siwaipatti, District Muzaffarpur
 3. Rajeev Gupta @ Rajeev Kumar son of Sri Umesh Prasad Gupta
 4. Sarita Gupta @ Sarita Devi @ Sarita Kumari wife of Sri Rajeev Gupta Both residents of Molarband, Badarpur, P.S. Badarpur, Delhi

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Swati Rani wife of Subodh Kumar Gupta, daughter of Om Prakash Gupta resident of Mohalla Shradhanand Bazar, P.S. Town, District- Siwan

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Amresh Kumar Sinha
		Mr.Pankaj Maijorwar
For the Opposite Party/s:		Mr.Sri Binod Kumar 3

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 06-04-2023

Ref- I.A. No. 01 of 2022

One Interlocutory application has been filed on behalf of the petitioner seeking amendment in the present portion of the application.

For the reason mentioned in the interlocutory application, the same is allowed.

Accordingly, the averments made in the interlocutory application no. 1 of 2022 shall be treated to be the party of the main application.

Heard learned counsel for petitioner and learned Ad-



ditional Public Prosecutor.

Present application is filed for quashing of the F.I.R. of Town (Nagar) P.S. Case No. 184 of 2018 dated 28.03.2018 under Sections 498A, 323, 406, 504, 506, 34 of the Indian Penal code and Section 3/4 of the Dowry Prohibition Act instituted by opposite party no. 2 and at present pending in the Court of Sub-Divisional Judicial Magistrate, Siwan.

The prosecution story is short is that the marriage of informant (Swati Kumari) got solemnized at Siwan on 03.02.2016. Few days after marriage, the mother-in-law, father-in-law, sisters-in-law and brother-in-law started accusing Swati of cheating their son i.e. husband who is C.A by profession, as he was getting dowry of Rs. 50 lakhs to which Swati responded that her father mortgaged land and organized marriage incurring expenses more than twenty lakhs upon which all the members started abusing and assaulting Swati and also broke her mobile phone and sim card was snatched from her. They always restrained Swati to talk to her father's place. After eight days, Swati with her husband departed to Assam and the same behaviour continued there as well. And slowly situation got worsened. The husband consumed alcohol regularly and used to torture her. It is further alleged by Swati that her husband was caught in



an objectionable position with the maid servant. Parents of Swati tried to resolve the matter, but they also faced brutality. The amount which was in her account was also withdrawn by the husband as well. The informant further alleges that on 20.03.2017 the husband beat the informant harshly and she suffered grievous hurt, snatched her jewellery and ousted her from the matrimonial home. After a complaint before Mahila Police Station, Siwan the husband came and executed bond that he will take Swati to her matrimonial home but thereafter he always gives threat to divorce her.

Learned counsel for the petitioners also submit that petitioner No. 1 (Indra Bhushan) is the Bhaisur, petitioner No. 02 (Prabha Devi) is the Gotni and petitioner no. 4 (Palak Kumari) is the Niece of the Opposite Party No. 02 and there are general and omnibus allegations against all the petitioners.

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. 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 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 28.03.2018 passed by Sub-Divisional Judicial Magistrate, Siwan in Town (Nagar) P.S. Case No. 184 of 2018 is hereby quashed.

(Sandeep Kumar, J)

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