

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31193 of 2015

Arising Out of PS. Case No.-165 Year-2014 Thana- CHERIYA BARIYARPUR District-
Begusarai

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1. Arjun Chaudhary Son of Maujelal Chaudhary
 2. Jaimala Devi Wife of Arjun Chaudhary
 3. Mukesh Chaudhary Son of Arjun Chaudhary All are residents of Hasanpur Chini Mill, P.S. - Hasanpur, District - Samastipur.
 4. Sanjoo Devi Daughter of Arjun Singh and wife of Subhash Mahto Resident of Village - Mobbi, P.S. - Rosera, District - Samastipur.
 5. Khusboo Devi Daughter of Arjun Singh and wife of Raju Mahto Resident of village - Sakari, P.S. - Sakari, District - Madhubani.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Sudha Devi Wife of Rajeev Chaudhary and Daughter of Ram Bilash Chaudhary Resident of Hasanpur Chini Mill, P.S. - Hasanpur, District - Samastipur and presently resident at village - Pabra Kajichak, P.S. Cheria Banapur Manjhaul, District - Begusarai.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Pankaj Kumar Singh
For the Opposite Party/s : Mr.Ram Naresh Roy App

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 17-02-2023 At the outset, learned counsel for the petitioners seeks

and is granted permission to withdraw this application on behalf

of petitioner no. 3 with liberty to him to raise all the grievances

at the appropriate stage.

Permission is granted.

It is, accordingly, dismissed as withdrawn.

Heard learned counsel for the petitioners and learned

APP for the State.



Learned counsel for the petitioners is permitted to remove defect(s), as pointed out by the office, if any, within a period of four weeks from today.

The present application has been filed for quashing the order dated 13.08.2014 passed by learned CJM, Begusarai in G.R. No. 3648 of 2014 arising out of Cheria Bairarpur P.S. Case No. 165 of 2014, by which the cognizance has been taken against the petitioners for the offence under Section 498A and 34 of I.P.C.

The prosecution story in short is that the informant Sudha Devi was married with co-accused Rajeev Chaudhary on 25.02.2008 and Rs. 75,000/- and ornaments were given to him at time of marriage. Two children were born out of the said wedlock. Thereafter, they started demanding Rs. 50,000/- and motorcycle as a dowry and threatened that if the demand is not fulfilled, he will marry another girl. It is further alleged that on 04.08.2014, all the petitioners including co-accused Rajeev Chaudhary again demanded Rs. 50,000/- and motorcycle and when she refused to fulfill the demands, they poured kerosene oil on the informant and Mukesh Kumar (Petitioner No. 3) tried to lit her and when she shouted, neighbours came and she was saved somehow, but she was ousted out of her matrimonial



home along with her two children.

Learned counsel for the petitioners further submits that petitioner no. 1 (Arjun Chaudhary) is the father-in-law, petitioner no. 2 (Jaimala Devi) is the mother-in-law and petitioner no. 4 and petitioner No. 5 (Sanjoo Devi and Khusboo Devi) are sisters-in-law and there is general and omnibus allegation against the petitioners no. 1, 2, 4 and 5 in the complaint.

The petitioner 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 petitioner 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 No. 1, 2, and 3 are concerned, they are general and omnibus.

So far as the objection of learned counsel 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.

The order dated 27.02.2013 passed in Complaint Case No.-182 C/12 by learned S.D.J.M., Lakhisarai on behalf of petitioners no. 1, 2 and 3 and the entire criminal prosecution of the petitioners is hereby quashed.

(Sandeep Kumar, J)

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