

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.9057 of 2016**

Arising Out of PS. Case No.-3113 Year-2012 Thana- MUZZFARPUR COMPLAINT CASE  
District- Muzaffarpur

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Soni Kumari and Anr Son of Late Ram Biranjan Singh, resident of Village-  
Dhrubgama, P.S. Kalyanpur, District Samastipur, at present resident of  
Mohalla C.P.M, Colony, Near Petrol Pump, P.S. Mithanpura, District  
Muzaffarpur.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Meenakshi Kumari, wife of Diwakar Kumar D/o Late Ram Prahlad Singh,  
resident of Village Dhrubgama, P.S. Kalyanpur, District Samastipur.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Lakshmi Kant Sharma  
For the Opposite Party/s : Mr. Binod Kumar 2 APP

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**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**ORAL ORDER**

3      28-03-2023                      Heard the parties.

This application has been on behalf of the petitioners  
for quashing the order dated 20.08.2013 passed by learned Sub-  
Divisional Judicial Magistrate, East Muzaffarpur in Complaint  
Case No. 3113 of 2012, Trial No. 2287 of 2013.

Learned counsel for the petitioners submits that  
petitioner No. 1 (Soni Kumari) is the Nanad and petitioner No.  
02 (Chandra Bhushan Singh) is the father-in-law and there is  
general and omnibus allegations against both 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***.

Learned counsel for the Opposite Party No. 02 Shri P.C. Jha has vehemently opposed the prayer of the petitioners and has submitted that the Nanad and the Father-In-Law were equally involved in the torture of the Opposite Party No. 02.

Further the learned APP for the State and the learned counsel for the Opposite Party No. 02 submits 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 and learned counsel for the Opposite Party No. 02 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 20.08.2013 passed by  
learned Sub-Divisional Judicial Magistrate, East Muzaffarpur in  
Complaint Case No. 3113 of 2012 / Trial No. 2287 of 2013 is  
hereby quashed.

**(Sandeep Kumar, J)**

Vikas/Shishir

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