

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23541 of 2015

Arising Out of PS. Case No.-579 Year-2014 Thana- LAKHISARAI District- Lakhisarai

1. Sumitra Devi Wife of Anandi Mahto
2. Chinta Devi wife of Madan Mahto
3. Ram Prabha Devi Wife of Ranjit Mahto All resident of Oraiya, ps. Lakhisari, District-Lakhisarai.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rabi Bhushan
For the Opposite Party/s : Mr. H.A.Khan APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 13-02-2023 Heard the learned counsel for the petitioner and
learned APP for the State.

This application has been filed for quashing the order dated 01.04.2015 passed by learned Chief Judicial Magistrate, Lakhisarai by which the cognizance has been taken under Section 341, 352, 307, 506 and 120(B) read with 34 of the IPC against the petitioner.

Heard the learned counsel for the State as well as the learned counsel for the opposite party.

It has been submitted by the learned counsel for the petitioners that the petitioners are females and there is no specific allegation against them. The police after investigation



submitted final form.

He has further submitted that though the Chief Judicial Magistrate has differed with the final form and taken cognizance against the petitioners but no material has come in the impugned order to connect the petitioners with the crime and the materials in the case diary have not been considered by the Chief Judicial Magistrate while taking the cognizance.

Learned counsel for the opposite party no. 2 has submitted that at this stage this Court may not interfere but may permit the petitioners to raise all the grounds at the time of framing of charge.

I have heard the learned counsels for the parties and have considered the submissions of the parties.

The allegation against the petitioners do not make out a case under Sections 341, 352, 307, 506 and 120(B) read with 34 of the IPC. Moreover, the petitioners cannot be directed to approach the Court below at the time of framing of charge and if the materials which are available at this stage and can be considered and those materials at the time of framing charge will remain same.

Hon'ble Apex Court in the Case of ***Ashok Chaturvedi and others Vs. Shitul H. Chanchani and Anr.***



Reported in 1998 7 SCC 698 in paragraph no. 5 is 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.”

Considering the judgment of the Hon'ble Supreme Court in the case of ***Ashok Chaturvedi and others Vs. Shitul H. Chanchani and Anr. (supra)*** and considering the facts that there is no allegations against the petitioners and in the FIR no material during investigation has come to connect the petitioner with the crime.

Considering the above, this application is allowed.

The order dated 01.04.2015 passed by learned Chief Judicial Magistrate, Lakhisarai vide G.R. No. 1527 of 2014 arising out of Lakhisarai P.S. Case No. 579 of 2014 dated 12.10.2014 by which the learned C.J.M. has taken cognizance is hereby quashed.

(Sandeep Kumar, J)

Shishir/Vikas

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