

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71125 of 2021

Arising Out of PS. Case No.-83 Year-2020 Thana- JAMHOR District- Aurangabad

SAURAV KUMAR S/o Uday Singh @ Uday Sharma R/o village- Ankuri,
P.S.- Pali, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Swati Kumari W/o Krishnandan Kumar @ Udit Kumar R/o village-
Hatikhap, P.S.- Jamhore, District- Aurangabad

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 71298 of 2021

Arising Out of PS. Case No.-83 Year-2020 Thana- JAMHOR District- Aurangabad

1. ARJUN SINGH S/o Late Keshav Singh R/o village Ankuri, P.S. - Pali,
District - Patna.
2. Uday Singh S/o Arjun Singh R/o village Ankuri, P.S. - Pali, District - Patna.
3. Aditya Kumar @ Bal Krishna Kumar S/o Arjun Singh R/o village Ankuri,
P.S. - Pali, District - Patna.
4. Vimla Devi W/o Uday Singh R/o village Ankuri, P.S. - Pali, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Swati Kumari W/o Krishnandan Kumar @ Udit Kumar R/o village
Hatikhap, P.S. - Jamhore, District - Aurangabad.

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 71125 of 2021)

For the Petitioner/s : Mr.Ashok Kumar Singh

For the O.P. No. 2 : Mr. Rabindra Kumar

For the Opposite Party/s : Mr.Mithlesh Kumar Khare

(In CRIMINAL MISCELLANEOUS No. 71298 of 2021)

For the Petitioner/s : Mr.Ashok Kumar Singh

For the Opposite Party/s : Mr.Parmanand Kumar

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 20-02-2023 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 06.09.2021 passed by learned Additional Judicial Magistrate, III, Aurangabad in G.R. No. 1962 of 2020 arising out of Jamhore P.S. Case No. 83 of 2020, by which the cognizance has been taken against the petitioners for the offence under Section 498A of I.P.C and Section 3/4 of the Dowry Prohibition Act.

The prosecution story in short is that the informant who is physically disabled married with co-accused Krishnandan Kumar on 26.04.2016 and a sum of ten lakhs was given to him at time of marriage. The husband of the informant was working in Central Bank, Rajkot and on the date of return of Barat itself, he went to Gujarat on the pretext of joining his job leaving her as per direction of her sisters-in-law. The father of the informant has informed the petitioners about her disability at the time of marriage, but soon after the marriage, she was subjected to tortured and harassment and cruelty due to non-fulfillment of demand of dowry by these petitioners. She was also ousted from her matrimonial house.



Learned counsel for the petitioners further submits that petitioner in **Cr. W.C. No. 71125 of 2021** Saurav Kumar who is the nephew of the co-accused Krishnandan Kumar, and in **Cr. W.J.C. 71298 of 2021**, the petitioner No.1 (Arjun Singh) is the father-in-law, petitioners no. 2 and 3 (Uday Singh and Aditya Kumar) are the brothers-in-law whereas petitioner no. 4 (Vimla Devi) is the sister-in-law and there is general and omnibus allegation against all the petitioners in the F.I.R.

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 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 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 06.09.2021 passed in Complaint Case G.R. No. 1962 of 2020 arising out of Jamhore P.S. Case No. 83 of 2020, by learned Additional Judicial Magistrate, III, Aurangabad 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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