

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6457 of 2019

Arising Out of PS. Case No.-62 Year-2018 Thana- BHANGWANPUR HAT District- Siwan

1. Indra Bhushan Dubey and Ors Late Gautam Dubey Resident of Village- Kauria Sarniha Tola, P.S- Bhagwanpur, District- Siwan.
2. Prabha Devi Indra Bhushan Dubey Resident of Village- Kauria Sarniha Tola, P.S. Bhagwanpur, District- Siwan.
3. Mostt. Maya Kunwar Late Gautam Dubey Resident of Village- Kauria Sarniha Tola, P.S. Bhagwanpur, District- Siwan.
4. Palak Kumari Indra Bhushan Dubey Resident of Village- Kauria Sarniha Tola, P.S. Bhagwanpur, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar and Anr Bihar
2. Vandana Kunwar Late Kanhaiya Dubey, D/o Chankrapanidutt Devedi Resident of Village- Kauria Sarniha Tola, P.S. Bhagwanpur, District- Siwan.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ajay Kumar Pandey
For the Opposite Party/s : Mr.Manoj Kumar

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 04-04-2023 Learned counsel for the petitioners seeks permission to withdraw this application so far as the petitioner no. 3 is concerned.

Permission is granted.

Accordingly, the application of behalf of the petitioner no. 3 is dismissed as withdrawn with liberty to the petitioner no. 3 to raise all her grounds at the stage of framing of charge.

Heard learned counsel for the petitioners and learned APP for the State.



The present application has been filed on behalf of the petitioners for quashing the order dated 12.09.2018 passed by learned A.C.J.M. II Siwan in Bhagwanpur in P.S. Case No. 62/2018 whereby and where under cognizance has been taken against the petitioners under Section 498A on the I.P.C.

The prosecution story in brief is that a written report was given by the informant to the Superintendent of Police, Siwan alleging there in that her marriage was solemnized in year 1998 with one late Kanhiya Dubey on 03.06.1998 but her husband Kahniya Dubey died on 19.10.2000. Thereafter all the accused person tortured her in various manners. Thereafter she went to her Maik and after some time she returned back then all the named accused persons stopped from entering the house, anyhow she entered in matrimonial house but they continued to torture her. They further asked her to bring her share from her parents. On 20.10.2017 they planned to kill her by setting her on fire. Then anyhow she saved her life, ultimately after taking her valuables and ousted from matrimonial house, thereafter she went to her parents house and complained the same then her parents came to her matrimonial house and asked about occurrence but they also misbehaved with in-laws of the opposite party no. 2. On direction of



Superintendent of Police, Siwan, the instant case has been lodged.

Learned counsel for the petitioners also submits 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 12.09.2018 passed by learned A.C.J.M. II Siwan in Bhagwanpur P.S. Case No. 62/2018 is hereby quashed.

(Sandeep Kumar, J)

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