

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38948 of 2011

1. Tarkeshwar Chourasia, S/O Kapildeo Chourasia, R/O Village – Barouni-I, (Dobha Toli), P.S.- Teghda, Distt. -Begusarai.
2. Pawan Kumar Luharika S/O Late Murlidhar Luharika, R/O Village - Fulwaria II (Barouni Chowk), P.S. -Fulwaria, Distt. Begusarai.
3. Om Prakash Luharika S/O Late Murlidhar Luharika, R/O Village - Fulwaria II (Barouni Chowk), P.S. -Fulwaria, Distt. Begusarai.
4. Narayan Kumar Luharika S/O Om Prakash Luharika, R/O Village - Fulwaria II (Barouni Chowk), P.S. -Fulwaria, Distt. Begusarai.
5. Kiran Devi W/O Om Prakash Luharika R/O Village - Fulwaria II (Barouni Chowk), P.S. -Fulwaria, Distt. Begusarai.
6. Asha Devi W/O Pawan Kumar Luharika, R/O Village - Fulwaria II (Barouni Chowk), P.S. -Fulwaria, Distt. Begusarai.
7. Anand Kumar Luharika S/O Om Prakash Luharika R/O Village - Fulwaria II (Barouni Chowk), P.S. -Fulwaria, Distt. Begusarai.
8. Madhu Devi W/O Anand Kumar Luharika, R/O Village - Fulwaria II (Barouni Chowk), P.S. -Fulwaria, Distt. Begusarai.
9. Nirja Devi @ Nirja Luharika, W/O Narayan Kumar Luharika, R/O Village - Fulwaria II (Barouni Chowk), P.S. -Fulwaria, Distt. Begusarai.
10. Mamta Devi @ Mamta Luhariak, W/O Pappu Kumar Luharika R/O Village - Fulwaria II (Barouni Chowk), P.S. -Fulwaria, Distt. Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Bhawani Devi W/O Krishna Nandan Singh, R/O Village- Ramdiri, P.S. Matihani, Distt. Begusarai.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Jha, Adv.
For the Opposite Party/s : Mr. Mohammad Sufyan, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT

Date : 18-04-2025

The instant petition has been filed under section 482 of the Code of Criminal Procedure (in short ‘Cr.P.C.’) with a prayer to quash the order dated 19.09.2011 passed by the court of learned Judicial Magistrate, 1st Class, Begusarai, in Complaint



Case No. 562(C)/2011, whereby the learned Magistrate has taken cognizance of the offences under sections 417 and 323 read with section 34 of the Indian Penal code (in short 'IPC') against the petitioners and by the same order, the petitioners have been summoned for the said offences.

2. Mr. Ashok Kumar Jha, learned counsel appearing for the petitioners submits that the alleged offences under sections 417 and 323 read with section 34 of IPC, of which cognizance has been taken, are not even *prima facie* attracted against the petitioners. The allegation made by the O.P. No. 2 in her complaint with regard to the alleged cheating is completely vague as there is no details of the particular land which is said to have been shown by the petitioner Nos. 2 and 3 to the complainant (O.P. No. 2) for the purpose of selling and further, there is no details of the area of the said land, which was to be purchased by the O.P. No. 2. It is further submitted that as per the averments made in the complaint of the O.P. No. 2, a sum of Rs. 50,000/- (Rupees Fifty Thousand) is said to have been given by the O.P. No. 2 to the petitioner Nos. 2 and 3 but there is no proof of payment of said amount and in this regard, averments made in the complaint by the O.P. No. 2 are completely vague and the petitioners should not be subjected to trial for the alleged offences on the basis of such vague allegations and averments



made by the O.P. No. 2 in her complaint. In fact, there was some enmity in between an advocate clerk and the petitioners and at the instance of said advocate clerk, several complaint cases have been filed against the petitioners and one Complaint Case No. 555(C)/2011 has been filed by one Bacchi Devi, who has been made as a witness by the O.P. No. 2 in her complaint. It is further submitted that against the petitioner Nos. 1 and 4 to 10, there is no specific allegation in the entire complaint and the alleged incident of *marpit* allegedly committed by these petitioners with the complainant (O.P. No. 2) is not believable as regarding the said incident, the complaint petition of O.P. No. 2 is completely vague. It is lastly submitted that the O.P. No. 2 has not appeared in this matter to oppose this petition, which also shows and confirms her malafide intention.

3. On the other hand, Mr. Mohammad Sufyan learned APP appearing for the State submits that the defences and grounds taken by the petitioners are subject of trial and there is sufficient *prima facie* material to attract the alleged offences and the petitioners have not shown any strong reason on the part of O.P. No. 2, who is a rustic lady, to file a false complaint against the petitioners and further, the factum of filing of several complaints against the petitioner Nos. 1 and 2 and others by different persons shows their background of cheating the



innocent persons.

4. Heard both the sides and perused the order impugned and the relevant materials. The O.P. No. 2 filed her complaint against the petitioners with the allegation that she wanted to purchase some land and in that course, she met the petitioner Nos. 2 and 3, who showed her a plot and persuaded her to purchase that plot and thereafter, on 20.02.2011, a sum of Rs. 50,000/- (Rupees Fifty Thousand) was given by her to the petitioner Nos. 2 and 3 as an advance amount and then the said petitioners assured her to transfer the land in her favour within a month and said her that she should verify the relevant documents and also inspect the land, which was to be purchased by her during that one month period and thereafter, when the O.P. No. 2 went over the proposed land, only then she found that the proposed land did not belong to one Pappu Kumar Luharika. Here, it is relevant to mention that though the said Pappu Kumar Luharika was added as an accused in the complaint but against him, the learned trial court did not take cognizance of the alleged offences. As per further allegation, after the lapse of said one month period, the complainant asked the petitioner No. 2 to transfer the proposed land by executing the deed but the petitioner No. 2 took an excuse of calling the petitioner No. 1, namely, Tarkeshwar Chourasia and then the O.P. No. 2 asked him



to return the advance amount to her but she was assaulted by the petitioners. Though the complainant (O.P. No. 2) did not give the specific details of the land which was proposed to be transferred in her favour and also, in this regard, the averments made in the complaint are some vague but before the trial court, C.W.-1, Bacchi Devi, an inquiry witness disclosed the details of the said land and according to her, the proposed land was one Katha and the same is situated near the Barauni Gas Factory and according to this witness, she has also given a sum of Rs. 50,000/- to the petitioners to purchase the land with the O.P. No. 2 and the consideration amount was fixed as Rs. 2,00,000/- (Rupees Two Lakhs) per katha. The complainant is a rustic lady and at this stage the petitioners' counsel has not shown any cogent reason on the part of O.P. No. 2 to file her complaint case against the petitioner Nos. 2 and 3 with false allegations and admittedly, five complaint cases, including the complaint case of O.P. No. 2, have been filed against the petitioner No. 2 and 3, which also goes against the said petitioners to some extent, though as per the petitioners' counsel all these complaint cases were filed at the instance of an advocate clerk but such ground can not be made a basis for quashing the cognizance of an offence, particularly, in the offence of cheating and furthermore, the petitioners' counsel has not shown any connection or relation between the said



advocate clerk and the O.P. No. 2. There is sufficient *prima facie* material to attract the alleged offences against the petitioner No. 2 and 3 but the allegations made in the complaint are not sufficient even *prima facie* to attract the alleged offences against rest petitioners, of which cognizance has also been taken against them as the specific role of any of them in the alleged offence of cheating and *marpit* has not been revealed by the O.P. No. 2 and in the opinion of this Court, subjecting the petitioner Nos. 1 and 4 to 10 to trial for the alleged offences will be an abuse of the process of court. Accordingly, the instant petition stands dismissed to the extent of petitioner Nos. 2 and 3 and affirms the cognizance of the alleged offences against them but the impugned order is hereby set aside to the extent of other petitioners i.e. petitioner Nos. 1 and 4 to 10.

5. In result, the instant petition stands partly allowed to the aforesaid extent.

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
CAV DATE	08.04.2025
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