

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38950 of 2011

1. Tarkeshwar Chaurasia, 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 @ Narayan, S/O Om Prakash Luharika, R/O Village- Fulwaria II (Barouni Chowk), P.S.- Fulwaria, Distt.- Begusarai
5. Pappu Kumar Luharika, S/o – Pawan Kumar Luharika, R/o Village- Fulwaria II (Barouni Chowk), P.S.- Fulwaria, Distt.- Begusarai
6. Kiran Devi W/O Om Prakash Luharika R/O Village- Fulwaria II (Barouni Chowk), P.S.- Fulwaria, Distt.- Begusarai
7. Asha Devi W/O Pawan Kumar Luharika R/O Village- Fulwaria II (Barouni Chowk), P.S.- Fulwaria, Distt.- Begusarai
8. Anand Kumar Luharika S/O Om Prakash Luharika R/O Village- Fulwaria II (Barouni Chowk), P.S.- Fulwaria, Distt.- Begusarai
9. Madhu Devi W/O Anand Kumar Luharika, R/O Village- Fulwaria II (Barouni Chowk), P.S.- Fulwaria, Distt.- Begusarai
10. Nirja Devi @ Nirja Luharika, W/O Narayan Kumar Luharika R/O Village- Fulwaria II (Barouni Chowk), P.S.- Fulwaria, Distt.- Begusarai
11. Mamta Devi @ Mamta Luharika, 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. Bacchi Devi, W/O Ram Kathin 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 18.08.2011 passed by the court of learned Judicial Magistrate, 1st Class, Begusarai, in Complaint Case No. 555(C)/2011, whereby the learned Magistrate has taken cognizance of the offences under sections 323, 504 and 417 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 323, 504 and 417 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 No. 1 and 2 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. 1 and 2 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, namely, Sakaldeo Ram 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. 562(C)/2011 was filed by one Bhawani 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. 3 to 11, 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 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 the 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, 2 and others by different persons shows their background of cheating the innocent persons.

4. Heard both the sides and perused the order impugned as well as the relevant materials. The O.P. No. 2 filed the complaint case against the petitioners with the allegations that she wanted to purchase some land, so, she contacted the petitioner No. 1, namely, Tarkeshwar Chaurasia, who was a property dealer, the petitioner No. 1 along with petitioner No. 2 showed the O.P. a plot, near Barouni Gas Factory and proposed her to sale the plot and the consideration amount was fixed as Rs. 2,00,000/- (Rupees Two Lakhs) per katha and thereafter, she and one Bhawani Devi gave Rs. 50,000/- (Rupees Fifty Thousand) each to the said petitioners as an advance, upon which, both the petitioners assured them to transfer the proposed land within one month by executing the deed but later on, it was found by the O.P. No. 2 (complainant) from the local persons that the proposed land did not belong to the accused and thereafter, the O.P. contacted the petitioner No. 2 and made a complain regarding the alleged wrong but she was abused and



assaulted by all the petitioners. From the above allegations, the commission of the offence of cheating *prima facie* appears and the O.P. No. 2 has given the details of the particular land which was proposed by the petitioner Nos. 1 and 2 for selling the same to the O.P. No. 2 and the payment of Rs. 50,000/- by the O.P. to the petitioner Nos. 1 and 2 as an advance was supported by an inquiry witness C.W.-2, namely, Bhawani Devi, who also claimed herself to be a victim of the acts of the petitioner Nos. 1 and 2. The O.P. No. 2 is a rustic lady and at this stage the petitioners' counsel has not shown any cogent reason on the part of the O.P. No. 2 to file the complaint case against the petitioner Nos. 1 and 2 with false allegations on the other hand admittedly, several complaint cases, including the complaint case of O.P. No. 2, have been filed against the petitioner No. 1 and 2, which goes against the said petitioners to some extent, though as per the petitioners' counsel all these complaint cases have been filed at the instance of an advocate clerk, namely, Sakaldeo Ram 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* materials to attract the



offence of cheating against the petitioner No. 1 and 2 but the allegations made in the complaint are not even *prima facie* sufficient to attract the alleged offences against rest petitioners No. 3 to 11, of which cognizance has also been taken against them as any specific role of any of them in the alleged offences of cheating, *marpit and abusing* has not been revealed by the O.P. No. 2 and in the opinion of this Court, subjecting the petitioner Nos. 3 to 11 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. 1 and 2 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. 3 to 11.

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

(Shailendra Singh, J)

annu/-

AFR/NAFR	NA
CAV DATE	08.04.2025
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