

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.5760 of 2013

Arising Out of PS.Case No. -71 Year- 2012 Thana -NALANDA COMPLAINT CASE District- -

Vijay Kumar, Son of Ramesh Prasad, Resident of Village Srichandpur, P.S. Harnaut, District Nalanda.

.... Petitioner

Versus

1. The State of Bihar.
2. The Superintendent of Police, Nalanda at Biharsharif.
3. The Sub-Divisional Officer, Biharsharif, District Nalanda.
4. The Officer-in-Charge, Harnaut Police Station, District Nalanda.
5. Tara Devi, Daughter of Late Sanjeev Kumar, Resident of Village Basti (Srichandpur), P.S. Harnaut, District Nalanda.

.... Opposite Parties

Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Amrendra Prasad (App)

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

10 04-05-2015

Heard.

The petitioner seeks quashing of notice dated 29.12.2012 issued by the Sub-divisional Officer, Biharsharif at Nalanda in Case No. 1521(M) of 2012 by which he directed the petitioner to appear before him and show-cause as to why the petitioner should not be directed to execute bond in the sum of Rs. 50,000/- with two sureties of the like amount each for a period of one year so as not to breach the peace. The notice has been annexed to the present petition and what appears is that for certain incidents of intercast marriage and birth of a child and some acts of assault and expulsion of the first party, namely, Vijay Kumar from his house Harijan P.S. Case No. 10 of 2011 under Sections 3/4 of the Dowry Prohibition Act had been instituted. The very



institution of the case triggered another incident and it was stated by the Sub-divisional Magistrate in his notice that another case under Section 498(A) read with 34 and 3(1)(x) of the S.C./S.T. (Prevention of Atrocities) Act as well as Sections 3/4 of the Dowry Prohibition Act was instituted and, as such, the situation had become as explosive as to raising an apprehension of bloodshed at the spot.

This Court refers to its decision in Brahmdeo Singh & Ors. Vs. The State of Bihar reported in 1980 B.L.J 353 in which it was held that substantive facts of a criminal case could never be based to initiate a proceeding under Section 107 Cr.P.C. What appears from the notice is that there was no other fact placed before the Sub-divisional Magistrate, Biharsharif except the facts which were the subject matter of investigation/enquiry of two substantive criminal cases. In addition to that what this Court finds is that the direction to execute a bond in the sum of Rs. 50,000/- with two sureties of the like amount each appears indicating the non-application of the judicial mind of the Executive Magistrate. It has been held in several decisions by this Court that directing execution of bond of heavy amount is itself sufficient to quash the proceedings as it shows non-application of the judicial mind. This non-application is further compounded by the fact that the notice which was issued on 29.12.2012 was containing vacant spaces for filling up the relevant date on which

the petitioner was to appear and it had also had another vacant space for putting down the amount of bond. Initial order under Section 107 Cr.P.C. has not been placed on record but the very perusal of the notice which is sought to be quashed indicates that the learned Executive Magistrate was acting mechanically without having relevant materials placed before him so as to initiating the proceedings and issuing the notice. Moreover, what this Court finds is that the notice was issued on 29.12.2012 and there is no material available to this Court from the side of the State to point out that there had been commission of further overt acts so as to justifying the continuance of the proceedings. The proceeding appears stale by the passage of time.

Considering the above reasons appearing only on perusal of the notice and the circumstances attending thereto, it appears an abuse of the process of Court if the proceeding initiated by the learned Sub-divisional Magistrate, Biharsharif at Nalanda is continued. In the result, the petition succeeds and the same is allowed by quashing the notice dated 29.12.2012 in Case No. 1521(M) of 2012.

(Dharnidhar Jha, J.)

Sanjay/-

U		T	
---	--	---	--