IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34464 of 2012

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1. Md. Israil S/O Late Mubarak Hussain R/O Village - Bherokhra, P.S. Tajpur, Distt. - Samastipur
2. Md. Faiyaz S/O Md. Israil R/O Village - Bherokhra, P.S. Tajpur, Distt. - Samastipur
3. Md. Abutalib @ Md. Abtalam S/O Md. Israil R/O Village - Chakdiwan, P.S. Jandaha, Ditt. - Vaishali

.... Petitioner/s

Versus

1. The State Of Bihar
2. Farhat Tarannum, D/O Md. Gyasuddin, resident of Ratawara, P.S. Kalyanpur, District-Samastipur.

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Smt. Anuradha Singh
For the Opposite Party/s : Mr. Yogendra Kumar (App)

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

5 09-03-2015 Heard.

The prosecution was initiated under Section 156(3) Cr.P.C., after getting a copy of the complaint petition bearing no.1736 of 2010 sent to the concerned police station for investigation. The FIR was drawn up and after close of the investigation, the police submitted chargesheet.

On perusal of the police report, the learned Magistrate took cognizance of offences under Sections 420,406,376,504 and 120B Indian Penal Code found constituted on the basis of materials available to him and further found that it were the three petitioners besides others named in the police report who appeared to him to have committed the said offences.

The petitioners are before this Court seeking the quashing of their prosecution which was initiated by order dated 20th of July, 2012 passed in G.R.No.2226 of 2010 (Town Mufassil P.S. Case No.621 of 2010).

The short facts are as under:-

The petition of complaint was filed by the informant Farhat Tarannum who was married to Md. Enam and who died on 23.07.2002. But what appears from the petition of complaint is that the husband/informant had left sufficient fund in a bank account maintained by her in the Punjab National Bank, Bazar Samiti Branch, Samastipur. Accused Md. Reyaz approached the complainant with a request to support him financially in his venture of establishing a shop of cellular phone under a promise that he will share with her 25 per cent of the profit amount and, by and by, shall also pay back the principal amount. The informant stated that she withdrew different sums of money amounting to Rs.40,000/- on two different dates from her account to pay the same to the accused Md. Reyaz. In addition to her withdrawal, she also withdrew sums of money as stated at page-4 of the complaint petition, from the account of her brother whose ATM card the informant was holding with her.

It was stated by the informant that on account of the said transaction or otherwise some sweet relationships developed between her and accused Md. Reyaz. Due to the sweet relationship developed in between them, Md. Reyaz proposed to her for marriage, but without marrying the informant, he exploited her sexually and lastly, refused to pay back the promised amounts. It also appears admitted that the informant, lastly, got her marriage registered with the accused Md. Reyaz by filing an application before the Registrar of Marriages but the said accused refused to go through the *Nikah* ceremony which was one of the religious requirements for two Muslims to get married and ultimately when persons of the *Mohalla* intervened, the accused refused to do it and his father Md. Israil, petitioner no.1 asked the lady to transfer her landed properties, then only the ceremony of *Nikah* was to be performed. It was further stated that petitioner no.1 Md. Israil also stated to the informant that the marriage was a fraud upon her which was got registered only to cheat her.

The lady stated that her repeated requests fell on deaf ears and without any outcome. Ultimately, the accused persons succeeded in misappropriating the amount which was advanced by her as debt.

What appears from the plain reading of the complaint petition is that there was nothing alleged against petitioners no.2

and 3, i.e., Md. Faiyaz and Md. Abutalib @ Md. Abtalam. While I was perusing the papers of the present petition I went through the paragraphs of the case diary. I found that witnesses who were questioned by the police did state that there was some cordial relationship between the informant and accused Md. Reyaz, but they did not state as a single word as regards the complicity of the three petitioners.

While hearing the present petition, I had also the privilege of hearing Shri Shyam Nandan Chaudhary, the learned counsel appearing on behalf of the informant and I could put a very direct question to it, that treating the statements made by the informant in the petition of complaint that when she approached petitioner Md. Israil to complain about the *Nikah* ceremony not being done, he stated to her to transfer the homestead land and further stated to her that the registration of the marriage of accused Md. Reyaz with the informant was mere a fraud to be true, what offence could be made out on these facts. The learned counsel appearing on behalf of the informant attempted to convince me that the two lines of allegations which appeared in the complaint petition against petitioner no.1 Md. Israil may constitute an offence under Section 420 Indian Penal Code.

Assuming for the sake of argument that the submission of the learned counsel appearing for the informant may have some semblance of merit, I analyzed the submission in the light of facts alleged. I could found that none of the ingredients of Section 419 or 420 Indian Penal Code was attracted on mere allegations of two lines of facts. Petitioner no.1 Md. Israil was not a party to any transactions which had taken place prior to the date when he was approached and contacted by the informant. He had neither requested for payment of money nor he had been paid any part of the money which the informant claimed having paid to Md. Reyaz nor petitioner Md. Israil had anything to do as regards the marriage of Md. Reyaz and the informant. There was no fraud committed and, in fact, there was no criminal intent as regards the previous act. As such, the offence of cheating which is the basic ingredient under Section 420 Indian Penal Code appears not constituted. Again as regards the summoning of the three petitioners for committing offences under Section 406,376,501 and 120B Indian Penal Code is concerned that also appears ordered without due application of the judicial mind of the Court to the facts of the case, as I have already pointed out that there was absolute absence of material facts in the case diary indicating the complicity of the three petitioners.

In the result, the petition succeeds. The initiation of the prosecution of the three petitioners by passing the impugned order dated 20.07.2012 passed by CJM, Samastipur in Samastipur (M) P.S.Case No.621 of 2010 appears an abuse of the process of the court, and, as such, the same is set aside. The petition is allowed.

(Dharnidhar Jha, J)

B.Kr./-

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