

THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.536 of 2013

Arising Out of Complaint Case No. 493(C) Year 2013 District- PATNA

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Dasgupta Rupashree @ Rupashree Dasgupta, Associate Professor D/O Sri P.B. Dasgupta, resident of Shree Ram Kuthi, Colony More, Balypukur, Bhatrapally, P.O.- Nabapally (Barasat) P.S.- Barasat, Pin- 700126, Dist.- N 24PGS (WB)

.... Petitioner/s

Versus

1. The State of Bihar
2. Director Dr. Arun Kumar, son of late Bambahadur Singh, resident of Director Quarter, I.G.I.M.S., Bailey Road, Sherikhpura, P.S. Shastri Nagar, Distt. Patna.
3. K.N.P. Churasiya, son of unknown, Assistant Administrative Officer, I.G.I.M.S., Bailey Road, Sheikhpura, P.S. Shastri Nagar, Patna-14.
4. Shri Nanda Kumar Paniyadi, son of unknown, Ex. Associate Professor, College of Nursingh, I.G.I.M.S., Bailey Road, Sheikhpura, P.S. Shastri Nagar, Distt. Patna-14.

.... Respondent/s

with

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Criminal Miscellaneous No. 21721 of 2013

Arising Out of PS.Case No. -799 Year- 2013 Thana -PATNA COMPLAINT CASE District- PATNA

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Dasgupta Rupashree, Associate Professor, D/O Shri P.B. Dasgupta, Resident Of Shree Ram Kuthi, Colony More, Balypukur, Bhatrapally, P.S. Barasat, P.O. - Nabapally (Barasat), Pin - 700126, Dist. - N 24PGS (WB)

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar
2. Director Dr. Arun Kumar, s/o late Bambahadur Singh, resident of Director Quarter, I.G.I.M.S., Bailey Road, P.S. Shastri Nagar, Sheikhpura, P.S. Shastrinagar, Patna - 14

.... Opposite Party/s

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Appearance :

(In CR. REV. No.536 of 2013)

For the Petitioner/s : Mr. Anup Kumar Changer, Adv.
Mr. Shruti Singh, Adv.

For the State : Mr. Amit Kumar Rakesh, Adv.

(In Cr.Misc. No.21721 of 2013)

For the Petitioner/s : Mr. Kumar Rajeev, Adv.

For the State : Dr. Indihar Kumari, A.P.P.

For the Opposite Party No. 2 : Mr. Akhilesh Pd. Singh, Sr. Adv.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
ORAL JUDGMENT

Date: 21-04-2016

Heard learned counsel for the Petitioners and the State.

2. Both the applications have been heard together and being disposed off together since they appear to be between the same Parties.

3. While the Petitioner in Cr. Revision No. 536 of 2013 seeks revision of the order dated 6.5.2013 by which the Judicial Magistrate, 1st Class, Patna, has dismissed Complaint Case No. 439(C) of 2013 in Cr. Misc. 21721 of 2013 she seeks quashing of the order dated 6.5.2013 by which the Judicial Magistrate, 1st Class, Patna, has taken cognizance in Complaint Case No. 799(C) of 2013 instituted by the Opposite Party No. 2.

4. On going through the records of the case, I find that the Petitioner instituted Complaint Case No. 439(C) of 2013 against the Opposite Party No. 2 and another Officer of the Indira Gandhi Institute of Medical Science, Sheikhpura, Patna. She alleged that after due interview on 21.6.2011, she was appointed on 14.10.2011 as Associate Professor in the Institute where the Opposite Party No. 2 was the Director. He is said to have given his Mobile number when she had met him in his Chambers for arranging a place for her accommodation and told her to talk to him at leisure time. She then called him up to inform about her difficulty, at which the



Opposite Party No. 2 asked her as to how much she would compromise. She replied that she was trying to adjust but was unable to take out her stuff because whenever the Guest House was booked, she had to move here and there bag and baggage due to which she was harassed. At this, the Opposite Party No. 2 told her that he was observing that she was adjusting well, so, upon this she asked as to how she was to compromise, i.e. was she to give him money, after that, he, replied that he was financially well off, so, she again asked him as to what is the meaning of compromise and whether it meant that she should establish physical relationship with him. He replied in the affirmative that since she had already understood his intention, he did not wish to repeat the same thing again and again. She found out that he had relations with high Police Officials and nobody would dare to depose against him. The Opposite Party No. 2 allegedly told her that as to why was she not considering his proposal and when she refused, she had to face the brunt of his ire. He also started to make physical moves to the discomfort of the Complainant. He kept a watch on her through the accused Nos. 2 and 3 who happened to be the employees of the Institute. She learnt that others had also been sexually harassed by the Opposite Party No. 2 against whom they had reported to Senior Police Officials. On 12.12.2012, the Opposite Party No. 2 purposely pushed her in front of door of Account Section due to

which she was sufficiently uncomfortable. When she repeatedly refusal to succumb to the proposals of the Opposite Party No. 2, she started being pressurized, on account of which her Parents had to leave their place and started staying with her. The Opposite Party No. 2 through the co-accused sent her messages that if she agreed to his proposal, everything would be set right.

She learnt that the accused was circulating details about her as also that she was mentally unfit. She was demoted when she did not agree to the proposal of the Opposite Party No. 2. She wrote letters to the Senior Officials in Bihar. In such circumstances, when the accused person had attempted to physically and mentally harass her, she instituted the present Complaint.

5. I find that on institution of the Complaint, the case was handed over to Shri Jyoti Prakash, Judicial Magistrate, 1st Class, Patna, for enquiry and disposal. She herself was thereafter examined on solemn affirmation along with her witnesses.

6. On 6.5.2013, the Magistrate passed a detailed order which I shall discuss later.

7. About three weeks later one of the accused of her Complaint filed a Complaint vide Complaint Case No. 799(C) of 2013 before the Chief Judicial Magistrate, Patna, arraying the Petitioner who appears to be a permanent resident of West Bengal as

one of the accused.

8. He stated in his Complaint that he was a very reputed Doctor and commanded great respect in the society and was in Government job since 1979 and was posted as Director and Vice Chancellor of Indira Gandhi Institution of Medical Science, Patna, since 2008. He confirms that the Petitioner through the advertisement published in the Newspaper on 21.6.2011, had applied for the Post of Associate Professor in Nursing College attached with the Institute. After the candidature of the Petitioner was examined, she was recommended for appointment on 13.9.2011 and appointment letter was issued in her favour according to which, she was to remain on probation for a period of two years and if her work was not found satisfactory during this period, her services would be terminated. The Petitioner then joined on 14.10.2011 which joining was accepted on 25.10.2011. However, in the period of probation, the original documents of all the newly appointed teachers of Nursing College was examined by the Committee, consisting of the Director of the Institute, Deen Faculty Assistant Administrative Officer. They found that the Petitioner did not possesses requisite period of teaching experience after completing her course which was a mandatory requirement for the post of Associate Professor (Nursing). In such circumstances, the Committee recommended that she should be



re-designated as Assistant Professor from the date of her joining after due legal opinion. As per the legal opinion, she was given legal notice as to why she be not been demoted to the post of Assistant Professor vide letter dated 28.4.2011 to which she replied three days later. However, she did not allege any malice or misuse of power by any of the members of the Committee. She then filed a writ application before the Hon'ble High Court, Patna, in C.W.J.C. No. 15713 of 2012 in which notices were issued to the Institute. Neither in the writ petition nor in the supplementary affidavit, were any personal allegations made against the accused. Her plea did not find favour with the High Court, whereafter, the matter was once again re-examined by the Institute on 10.12.2012. A show cause notice was once again issued to her. She did not file any reply to it, and, instead adopted a method to apply undue pressure on the Committee not to pass an adverse order against her and went on to publish defamatory statements in the print media and gave such statements before the electronic media. She cast serious aspersion and accusation against the Complainant alleging her exploitation for allotment of accommodation to her though till 3.1.2013, no such allegation was made against him with regard to any exploitation or any act of misbehaviour. The Complainant further gave certain instances that despite the misbehaviour of the Petitioner, no action was taken against

her. In fact, enquiries were made about her and it was found that the Petitioner was misbehaving with her colleagues. She was warned several times with regard to the misbehaviour and misconduct and told to mend her ways and a Sanha was also given to the local Police in this regard on 12.9.2012.

The Complainant then alleged that the Petitioner had filed a false Complaint before the Chief Judicial Magistrate, Patna, vide Complaint Case No. 439C of 2013 with defamatory allegations alleging physical and sexual exploitation. She had done so to blackmail the Complainant with ulterior motives/purposes to cover up her own acts.

The further allegation was that the accused had made serious, unsocial and defamatory statements to cause damage to his eminent position and personality so he would succumb to her illegal and unlawful desires under pressure.

She had indulged in malicious Prosecution by filing a false Complaint due to which the image of the Complainant was badly affected and lowered down. He further stated that the allegations made by the Petitioner in the Complaint petition was duly enquired into by the Indian Medical Association, Bihar State Branch at their own level and the writ application was found baseless according to a Press communique issued on 3.2.2013. He further alleged that the

Accused was in the habit of picking up quarrels with her colleagues for which a First Information Report was also instituted against her by one of the Colleagues Sushma Charley.

He explained that as the Director of the institute, he had acted well and that it was his administrative duty or rather obligatory to act in the manner he did and the allegation with regard to the allotment of accommodation to the employees concerned was in accordance with rules framed which he explained in some detail. It is under these circumstances, that the Complaint was filed by the Opposite Party No. 2 saying that the Petitioner was guilty for the acts of serious criminal acts or criminal defamation and had to abuses the process of Court.

The Complainant also alleged that she and one Hansmukh Jain got accommodation at the same time in December, 2011 and she had not submitted anything relating to sexual harassment in the High Court and has only submitted about the demotion. And further that it was true that administrative action was taken against her in August, 2012 and as per the direction of Hon'ble High Court she came to meet the Director, but he refused to meet her. Complainant further stated that nobody from the Institute had come to depose in her favour. Also show cause was given to her since she did not have adequate experience after the post graduation and while she was on

probation.

9. I find that the impugned orders, on point of cognizance were passed on the same day, in regard to both the Complaints.

10. In Complaint Case No. 439 of 2013 filed on behalf of the Petitioner, the Magistrate after noting the facts of the complaint petition stated the following:

“Perused the records and it is ascertained from its perusal that complainant has filed this case against the directors, associate Prof, Asst administrative officer IGIMS under section 354, 509 and indecent representation of woman act 1986. Now from the above stated facts it appears that complainant’s allegation can be stated in following points:

01. That the director gave his number to the complainant and asked her to call between 7 AM to 11 PM

02. That director asked her to compromise by conversation on telephone

03. That the director forcefully put his hand over her hand in capping ceremony on 16th of May.

04. That Nanda Kumar P insulted her by saying she was a hopeless lady and threatened her

05. That director pushed her in front of the door of account section

Now it is also evident from the perusal of the record that complainant joined in 14.10.2011 and on the next day itself that is 15th of October 2011 director gave a number to the complainant when she and her mother went to meet him and told her to call between 7 AM to 11 PM. Further, complainant was living in the guesthouse of the Institute and subsequently when she asked the director on 14 November

2011 on telephone the director asked her to talk only on telephone and also said to what extent she can compromise. To this complainant asked the director whether he wants her to be his bedmate, to which assent was given by the director. It is important here to mention that complainant has not given neither the telephone number which was given to her nor has stated the time of the conversation between her and the Accused. Moreover, no call details of the conversation of the telephone has been furnished by the complainant in this regard. Also, it is important to note that when the incident as alleged was told by the complainant to the parents they asked her to tolerate. Further, in the enquiry itself it is submitted that capping ceremony involves many students and as alleged by the complainant that director put his hand over her hand when she was coming outside, with no independent or eyewitnesses to the incident is important aspect to ascertain. Complainant was threatened and insulted by saying that she was a hopeless lady by Nanda Kumar P, but no time, place of eyewitnesses independent to the incident has been illustrated by the complainant. It is also important to note here that complainant herself has submitted that she has filed a case in the Hon'ble Patna High Court regarding demotion matter and she has not raised anything related to the matter of sexual harassment in that case while she was told earlier that if she do not accept the demand of the director then her service will be in difficult. Imperatively again, it is important to mention here that all the alleged incident took place in November, 2011, May 2012 that is before the filing of the case in Honorable High Court. Also out of the 3 witnesses are examined, none of the witnesses are eyewitnesses to the any of the incident and 2 witnesses are the relatives and interested witness of the complainant while EW 3 has submitted that she does not know about any of the incident as alleged and the torturing attitude of the director is only related

to job.

It appears from the above stated facts that the genesis of the case relates to the service matter between the complainant and the Institute through its director, for which complainant has filed a case in the Honourable high Court. Dignity of a woman is always to be respected in an educated and the progressive Society. And in the modern times when the woman emancipation is the need of the hour, anything regressive cannot be appreciated. But the right regarding the dignity has to be exercised with due care and full honesty. In the above stated facts it appears to this Court that occurrence as alleged took place in November 2011 and May 2012 and when an order was passed by the Hon'ble High Court Patna such case was brought before this Court. There is no reason stated by the complainant why it took so long for her to file the case as above stated. The complainant appears to be educated and independent and well aware of her rights, then what was she waiting for has not been depicted by the complainant. It is hard to believe that her parents had asked the complainant to tolerate the demands way back in 2011. It is also important to note that director has not met the complainant many times as stated in the enquiry. Ironically, one the one hand director asks the complainant to compromise and on the other hand he asks her to talk only on telephone. Even no independent witness is there who has seen the director pushing the complainant in front of account section. Complainant has not filed any paper regarding how her history was circulated. Significantly, whole institute asked the complainant to compromise with the director and yet no one has come to depose. The intention on the part of the director and the other accused either to insult or outrage the modesty has not been in any form evident to attract prima facie action against them. The learned counsel for complainant has filed various rulings and the provisions of law but it is a cardinal principle of



law and criminal jurisprudence that to make out any case against anybody prima facie Mens rea has to be seen and in the present case, it appears to this Court that the same is missing and various cogs in the chain of causation to make out prima facie case is devoid of many substantial links. Also this is a law of equity that one who seeks justice should come with clean hands. Complainant never raised the issue before the police nor at the time of filing the case related to demotion in the Hon'ble Patna High Court. Therefore, after considering the statements on oath of complainant and of the witnesses – who are related and interested witness, and the materials available on the record, this Court is of the opinion that there is no ground sufficient for the proceeding against the accused persons and this complaint case is dismissed as per the provisions of section 203 Code of Criminal Procedure 1973. Office clerk is directed to act accordingly”.

(underlining mine)

11. It is apparent from the aforesaid order, that the Magistrate has exceeded his jurisdiction by virtually writing a Judgment of acquittal while dismissing the Complaint. At the stage of cognizance all that he was required was to see or not whether prima facie an offence is made out against the accused persons. At this stage he was not required to look into the reason as to why the Complaint was filed, whether it was mala fide reason or bona fide, or because of a service dispute.

I also find that the Magistrate has taken note of the facts stated in the Complaint filed by the Opposite Party No. 2 while

doing so and leaned in his favour unjustifiably.

In such circumstances, the order dated 6.5.2013 passed by Shri Jyoti Prakash, Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 439(C) of 2013 is quashed and the matter is remanded to the Court below for a fresh order on available material within three weeks from the date of receipt of this order.

12. Now, to deal with the Complaint filed by the Opposite Party No. 2 and the order passed thereon. On a bear reading of both the Complaint petitions one finds that the Complaint filed by Opposite Party No. 2, is only an attempt to bring on record his defence and justify his action.

13. The Magistrate after noting the facts of the complaint petition stated the following:

“Perused the record and it is ascertained from its perusal that administrative actions were taken by the complainant being the Dir of the Institute IGIMS against the accused regarding the defect in the appointment. Various administrative processes were followed before filing of a case by the accused against the director, associate Prof. Asst administrative officer of mental and physical torture and the case being filed when the show cause notice was served to the accused asking her why her services should not be terminated. Even when the earlier show cause and the validity of the action of the Institute was challenged by the accused in the Honourable High Court Patna, no allegation regarding mental or physical torture has been alleged to have stated by the accused against the



director or associate Prof or Asst administrative officer or any officer of the Institute and suddenly, when she has been show caused she has given statement in the print media and other media and has filed case; which appears to this Court that the conduct of the accused is not bona fide and is mala fide in nature. Age of the complainant is 63 years as that of accused is 35 years. Even the enquiry made by the Medical Association has given clean chit to the complainant. It appears to this Court that accused intended to harm the reputation of the Complainant and put him under pressure so that any administrative action is not taken by him. Therefore this Court taking a pragmatic view and considering the above stated facts and if the larger interest of justice makes out prima facie case against the sole accused under Section 500 of IPC. Complainant is directed to furnish the requisites within 7 days and office is thereafter directed to act accordingly".

(underlining mine)

14. I thus find that the Magistrate has not only taken extraneous materials while leaning in favour of the Opposite Party No. 2 as also his judicial order reveals his total deficiency of knowledge of Criminal law. I fail to understand as to how under the circumstances of the Complaint, which I have detailed above, and he himself discusses he found the case fit to proceed under Section 500 Indian Penal Code.

I also fail to understand as to how he could have given a finding of 'mens rea' on the part of the Petitioner and absence of it

on the part of the Opposite Party No. 2 at the stage of cognizance.

He also seems to have taken facts of both the Complaints in consideration and pitted them against each other weighed them and held as noted above which is not the procedure prescribed in law. Moreover, on a bare perusal of Complaint Case No. 799(C) of 2013, I find that no case is made out against the Petitioner and hence the order of cognizance dated 6.5.2013 passed by Shri Jyoti Prakash, Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 799(C) of 2013, is hereby set aside.

The Office is also directed to place this order and the two Complaints as also the impugned orders of Shri Jyoti, Prakash, Judicial Magistrate, 1st Class, Patna, before Hon’ble the Acting Chief Justice, for proper action.

(Anjana Prakash, J)

S.Ali/-

AFR/NAFR	
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