

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.432 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- MADHUBANI

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1. Narendra Bhushan, Son of Late Deo Nandan Prasad, Resident of Village-
Bajarangpuram, Rewa Road, Bhagawanpur, P.S.- Sadar, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Tirsha Chakaravarty, Son of Ranjan Chakarvarty, Resident of Village- Raj
Kumar Ganj, P.S.- Town, District- Darbhanga.
3. District Magistrate-cum- Chairman of the District Health Society, Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Baidyanath Thakur, Advocate
Mr. Shankar Kumar Thakur, Advocate
Mr. Prabhakar Thakur, Advocate
For the Respondent/s : Mr. Lalan Kumar, AC to GP-9

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 04-04-2017

Heard learned counsel for the petitioner and learned
Government Pleader No.9, appearing on behalf of the State-
respondents.

2. The petitioner has invoked the writ jurisdiction of
this Court to quash the F.I.R. of Madhubani Town Police Station
Case No.8 of 2016, vide Annexure-6, registered under Sections 498
and 506 of the Indian Penal Code. Subsequently, offences under
Sections 166 and 166A of the Indian Penal Code were added.

3. Respondent No.2 Trisha Chakarvorty had filed an
application before the District Magistrate-cum-Chairman of District



Health Society, Madhubani, stating therein that the informant was posted in the Sadar Hospital, Madhubani, as Occupational Therapist, on contract basis since 20.02.2014. She received pay till the month of August, 2015. However, she was not paid remuneration since last four months for the reason that this petitioner, who was Civil Surgeon, Madhubani at that time, had orally ordered for stoppage of pay of the informant till certificate of the informant is re-verified. The said order was passed by the petitioner in spite of the fact that certificates of the informant was already verified by the predecessor Civil Surgeon and were found correct and genuine one. The informant had prayed to the District Magistrate for release of pay as she was facing hardship. On the same petition the District Magistrate ordered for institution of an F.I.R. against the petitioner and accordingly the F.I.R. has been lodged.

4. Learned counsel for the petitioner submits that on bare perusal of the F.I.R. no offence is made out much less the offences alleged. Hence, the criminal prosecution against the petitioner is an abuse of the process of the law and violates fundamental right of the petitioner.

5. In spite of service of notice, no one appeared on behalf of Opposite Party No.2. The State-respondent has filed



counter-affidavit giving details of the appointment process of Opposite Party No.2 as Occupational Therapist. It is further stated in the counter affidavit that one Pratiyush Kumar lodged objection over the inclusion of name of Ms. Trisha Chakraborty, respondent No.2, in the select list on the ground that Ms. Trisha Chakraborty had not produced any experience certificate. The said objection was disposed of by the Committee on 20.02.2014 and, accordingly, appointment letter was issued in favour of respondent No.2. It is further stated in the counter affidavit that in the light of direction in **Vishaka's Case**, the F.I.R. was lodged. However, learned counsel for State-respondent failed to explain that there is any allegation of sexual harassment against the petitioner to Opposite Party No.2.

6. In **State of Haryana V. Bhajan Lal** reported in **1992 Supp (1) SCC 335**, certain illustrations were noted for consideration of a case of quashment of the criminal prosecution. Relevant illustrations are being reproduced below:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable



offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.”

7. The relevant penal provisions of the offences of the Indian Penal Code alleged are being reproduced below:

“498. Enticing or taking away or detaining with criminal intent a married woman.—

Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

506. Punishment for criminal intimidation.—Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with



imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

166. Public servant disobeying law, with intent to cause injury to any person.—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

[166A. Public servant disobeying direction under law.- Whoever, being a public servant,-

- (a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or
- (b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or
- (c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under section 326A, Section 326B, section 354, section 354B, section 370,



section 370A, section 376, section 376A,
section 376B, section 376C, section 376D,
section 376E or section 509,

shall be punished with rigorous imprisonment for a
term which shall not be less than six months but which
may extend to two years, and shall also be liable to
fine.]”

8. A bare perusal of the F.I.R. prima facie does not
constitute the offences alleged against the petitioner. Moreover,
offences under Sections 498, 506 and 166 of the Indian Penal Code
are non-cognizable offences and since offence under Section 166A
of the Indian Penal Code is prima facie not applicable against the
petitioner, therefore, there is no justification for investigation of this
case by the police. In the result, criminal prosecution of the
petitioner would be an abuse of the process of the Court.
Accordingly, the same is hereby quashed and this criminal writ
application is allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	07.04.2017
Transmission Date	07.04.2017

