

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17465 of 2012

Arising Out of Complaint Case No. 2162 (C) Year 2009 District- PATNA

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Anwarul Islam, s/o late Abdul Salam, r/o Mohalla-Shahganj, Professor Colony,
P.S.-Sultanganj, Distt-Patna

.... Petitioner

Versus

1. The State of Bihar
2. Arbind Kumar Bhaskar, s/o Raghunath Singh, r/o Shiv Nagar, P.S.-Beldaur,
Distt-Khagaria

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Ranjay Kumar Singh, Advocate.
Dr. Gajendra Pd. Singh, Advocate.
For the Opposite Parties : Mr. Kanhaiya Kishore, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 12-01-2017

Heard learned counsel for the Petitioner and the State.

On last date also case was heard. The case was adjourned for today as last chance since no one on behalf of the opposite party No. 2 was present. Today also no one on behalf of the complainant appeared.

The Petitioner seeks quashing of the order dated 21.10.2009 by which the learned Judicial Magistrate, 1st Class, Patna, took cognizance under Sections 500, 504, 323 and 379 of the Indian Penal Code in Complaint Case No. 2162 (C) of 2009 against the petitioner and three others namely, Shahnaz Aslam, Zohra Aslam and Md. Farooque Mian.



The allegation as made in the complaint by opposite party No. 2 and five other accused persons is that on 5.7.2009, the complainant along with his wife Chunchun Kumari with a child had gone to give statement in Gandhi Maidan Police Station Case No. 193 of 2009 at Patna and when he reached in the office of Deputy Superintendent of Police at about 2:30 p.m. where two men, one woman and one girl were present and on interrogation by police, it was revealed that the wife of Dr. Jamil Akhtar namely, Shazia Farah Aslam had filed the aforesaid case against her husband in which it is alleged that Dr. Jamil Akhtar has illicit relation with his wife and out of the said relation, a son was born. It is further alleged that wife of the complainant Chunchun Kumari was posted at Barahat Public Health Centre as Nurse where Dr. Jamil Akhtar was posted. Further allegation is that after statement, the complainant along with his wife Chunchun Kumari and baby were going to Patna Railway Station to catch train and when they reached near Hanuman Mandir, all the aforesaid persons confined them. The petitioner started assaulting the complainant. The mother-in-law and sister-in-law of Dr. Jamil Akhtar caught hold his wife Chunchun Kumari. Zahra Aslam threw the child on the ground with a view to kill him whereas mother-in-law of Dr. Jamil Akhtar thrashed his wife by holding her hair. It is alleged that Shahnaz Ansari snatched golden chain of his wife and Zahra Aslam



snatched her purse whereas Md. Farooque forcibly took away the wrist watch from the wife of the informant.

During enquiry, the complainant was examined on Solemn Affirmation. Besides the complainant, the statement of two other witnesses was also recorded. The complainant has annexed the statement of two witnesses recorded during enquiry under Section 202 Cr. P.C. as Annexure-2 series. The complainant also produced the Solemn Affirmation. On perusal of the same and statement of two other witnesses, it appears that there is no any allegation of overt act against the petitioner during enquiry.

The court below by the impugned order has found prima facie case against the petitioner along with other accused persons for the offence under Sections 500, 404, 323 and 379/34 of the Indian Penal Code.

This Court on perusing the Solemn Affirmation of the complainant and statement of other witnesses is of the view that no offence under Sections 500, 404, 323 and 379/34 of the Indian Penal Code is made out against the petitioner. In fact, the complainant on Solemn Affirmation has not levelled any overt act against the petitioner.

In such circumstances, the order of cognizance with respect to the petitioner, by order dated 21.10.2009 passed by the



learned Magistrate, 1st Class, Patna, in Complaint Case No. 2162 (C) of 2009 is illegal and continuance of criminal proceedings against the petitioner will be abuse of process of law.

Therefore, the impugned order by which the cognizance has been taken against the petitioner and the entire proceedings against him is hereby quashed.

The Cr. Misc. is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N/A.
Uploading Date	21.01.2017
Transmission Date	21.01.2017

