

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42104 of 2013

Arising Out of PS. Case No.-801 Year-1995 Thana- PATNA COMPLAINT CASE District- Patna

Md. Shamim Son of Late Md. Usman Resident of Mohalla- Khalilpur, P.S. Phulwarisharif, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Nasimuddin Sharar Son of Late Noor Mohammad Resident of Mohalla- Salimpur, P.S. Sohsarai, Biharsharif, District- Nalanda, At Present Residing At Mohalla- Alamganj, Pirvais, P.S. Alamganj, District- Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shahabuddin Azeem @ S. Azeem

For the Opposite Party/s : Mr. SATYENDRA PRASAD (APP)

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

Date : 28-11-2017

Heard learned counsels for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 04.11.1995 passed by the Judicial Magistrate, 1st Class, Patna in Complaint Case No. 801 (C) of 1995, whereby cognizance has been taken against the petitioner for the offence under section 406, 417, 418, 420 and 120B of the Indian Penal Code.

The contention of the petitioner is that no offense against the petitioner is disclosed and the present prosecution has been instituted with *mala fide* intention for the purpose of harassment. It is further submitted that the petitioner has been



falsely implicated in this case as he did not receive any amount/cheque from the complainant. The the present complaint petition has been filed by Md. Nasimuddin, the husband of the aggrieved lady and not by the lady herself, and as such, the same should not have been entertained. Moreover, from the allegations levelled no criminal liability is made out against the petitioner. The dispute is purely civil in nature. It is lastly contended that cognizance was taken in the year 1995 and thereafter there has been no progress in the case. It is, therefore, prayed that the order taking cognizance is fit to be quashed.

Learned counsel appearing for the State opposes the application.

From perusal of the materials available on record and looking into the facts of the case, this Court finds that the submissions advanced on behalf of the petitioner has no force. The present complaint has been lodged by the husband of the aggrieved lady. It is well settled that if the wife is a pardanasheen lady, the case can be lodged by her husband. As regard the submission of the petitioner that there has been no progress in the case, from the report contained in memo no. 257 dated 23.08.2017, which is an exhaustive one, received from the Court below, kept at Flag- Q, it appears that petitioner never



appeared before the Court below even after having knowledge of the case as he moved for grant of anticipatory bail. Petitioner even moved this Hon'ble court in Cr. Misc. No. 37931 of 2012, which was disposed of directing the petitioner to surrender before the Court below within six weeks and pray for regular bail, but petitioner did not appear before the Court below till date.

In view of the discussions made above, this Court does not find any error in the order taking cognizance warranting interference of this Court. The prayer for quashing the same is refused.

The application accordingly stands dismissed.

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	AFR
CAV DATE	06.09.2017
Uploading Date	29.11.2017
Transmission Date	29.11.2017

