

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25912 of 2012

Arising Out of PS.Case No. -2388 Year- 2003 Thana -null District- KATIHAR

=====

Bablu Jaiswal, son of Rajendra Jaiswal, resident of village - Sisiya, P.S. Kodha,
Distt. - Katihar

.... Petitioner/s

Versus

1. The State of Bihar
2. Ramwati Devi, w/o Kare Rishi, resident of village - Parmanandpur, P.S. Kodha,
Distt. - Katihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Chandra Shekhar Singh, Advocate.
For the State : Mr. Nawal Kishore Prasad, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 18-07-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 6.8.2011 passed by the Judicial Magistrate, 1st Class, Katihar, in Complaint Case No. 569 of 2005 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners and other accused persons for the offences under Section 354 of the Indian Penal Code.

2. Heard learned counsel for the petitioners and State.

3. Learned counsel for the petitioner has submitted that on 24.12.2003, the complainant has filed the instant complaint case against the petitioner whereas on the same day Bataidar Case has



been filed by the husband of the informant vide Bataidar Case No. 91/03-04. This case has been filed by the complainant only to harass the petitioner.

4. The police after investigation found the case false and submitted final form No. 3 of 2005 dated 17.1.2005. The learned Magistrate after submitting Final Form proceeded with the protest petition treating the same to be a complaint petition by order dated 23.3.2005. The protest petition was filed in the court below by the informant on 30.11.2004 stating that the date of occurrence is 21.12.2003.

5. The impugned order passed by the learned Magistrate taking cognizance is barred by limitation in terms of the provisions of Section 468 Cr. P.C. as maximum punishment as prescribed in Section 354 of the Indian Penal Code at that time was two years.

6. From the record it appears that Bataidar Case No. 91 of 2003-04 was filed by the husband of the complainant annexed as Annexure-5 on the same date i.e. 24.12.2003 when the complainant (wife) has filed the instant complaint case against the petitioner.

7. Counsel for the petitioner has submitted that the informant was Bataidar of the petitioner and just to harass the petitioner, filed the instant complaint.



8. Annexure-2 is the Final Form submitted by the police on 17.1.2005 finding the case false. Learned Magistrate has thereafter proceeded on the basis of protest petition filed by the informant after recording Solemn Affirmation of the complainant and statement of three witnesses. The learned Magistrate after holding enquiry found prima facie case against this petitioner for the offence under Section 354 of the Indian Penal Code.

9. Section 468 Cr. P.C. specifically speaks about bar to take cognizance after lapse of the period of limitation.

10. As per Section 468(2) (C) of the Cr. P.C. the period of limitation for taking cognizance is three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

11. The offence under Section 354 of the Indian Penal code at the time of occurrence i.e. in the year 2003, was punishable with maximum sentence of imprisonment of either description for a term which may extend to two years or with fine or with both.

12. In such circumstances, this Court finds that impugned order dated 6.8.2011 passed by the Judicial Magistrate, 1st Class, Katihar, in Complaint Case No. 569 of 2005 by which he has found prima facie case against the petitioner for the offence under Section 354 of the Indian Penal Code committed on 21.12.2003 is



barred by limitation in terms of provision of Section 468 Cr. P.C.

13. Accordingly, the impugned order dated 6.8.2011 passed by the Judicial Magistrate, 1st Class, Katihar, in Complaint Case No. 569of 2005 is not sustainable in the eye of law and the same along with the entire criminal proceeding against the petitioner is hereby quashed.

14. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	31/07/2017
Transmission Date	31/07/2017

