

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.15289 of 2014

Arising Out of PS.Case No. -2597 Year- 2011 Thana -PATNA COMPLAINT CASE District-
PATNA

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Baidyanath Rai Son Of Nagendra Rai Resident Of Village:- Subhai, Police Station:-
Hajipur Sadar, District:- Vaishali

.... Petitioner/s

Versus

1. The State Of Bihar
2. Satya Prakash Son Of Ramyatan Yadav Resident Of Mohalla:- Punaichak, P.S.:-
Shashtri Nagar, District:- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar, Advocate
For the Opposite Party/s : Mr. Rajendra Singh Shastry, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
CAV JUDGMENT

Date: 24-08-2017

Heard learned counsel for the parties.

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing of an order dated 16.04.2012 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 2597(C) of 2011 whereby the learned court below took cognizance against the petitioner under Sections 448, 380 and 34 of the Indian Penal Code.

The brief facts of this case is that the complainant was married with co-accused Kiran Kumari in the year 2003 and out of their bedlock, a female baby was born. There after, the wife of the complainant filed a complaint case No. 630 of 2006 against the complainant along with his family members for the offences punishable under Section 498A of the Indian Penal Code. Despite several efforts when the matter could not resolved, the complainant filed a Matrimonial Case No. 369 of 2007 for restitution of conjugal rights and in retaliation the wife of the complainant also filed a



Divorce Case No. 201 of 2010 against him. Thereafter the complainant also filed a Guardianship Case No. 30 of 2009 for his daughter and the same has been decided in his favour. In continuation of aforesaid series of litigation, the complainant again filed the entire complaint for the alleged offence of assault and theft against the petitioner and other accused persons.

Learned counsel for the petitioners has submitted that petitioner has not committed any offence as alleged in the complaint. As a matter of fact, there are series of litigation between the complainant and his wife and when the wife of the complainant performed marriage with this petitioner, he has falsely been implicated in this case with general and omnibus allegation only to harass the petitioner and her wife. The manner of allegation leveled in the complaint itself goes to show that this petitioner has not played any role in the entire matter rather he made a victim of circumstance only. Moreover, no any witnesses have supported the prosecution version. Therefore, no specific case is made out against the petitioner but the court below without appreciating the material on record has taken cognizance in a routine manner. On the above ground, it is submitted that the cognizance order is bad in law and is fit to be quashed.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioner and the court below after going through the materials available on record has found a prima facie case made out against the petitioner and rightly taken cognizance for the offence under Sections 448, 380 and 34 of the Indian Penal Code. Therefore, the order taking cognizance does not require any interference.

From perusal of the material on record and looking into the facts of the case at this stage, it cannot be said that no offence is



made out against the petitioners. All the submissions made at Bar relates to disputed question of fact, which cannot be adjudicated upon by this Court in exercise of power conferred under Section 482 Cr.P.C. Only a prima facie satisfaction of the Court about the existence ground to proceed with the matter is required. At this stage, only prima facie case is to be seen in the light of the law laid down by the Supreme Court in cases of ***R.P. Kapur Vs. State of Punjab, A.I.R. 1960 SC 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192, Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283*** and recently in ***A.R.C.I. Vs. Nimra Cerglass Technics (P) Ltd. (2016) 1 SCC 348***. The submission made by the learned for the petitioner call for adjudication on pure question of fact which may be adequately gone into by the trial court in this case. This Court does not deem it proper, and therefore, cannot be persuaded to have a pre-trial before the actual trial begins. The disputed defense of the accused cannot be considered at this stage. Moreover, the petitioner has got a right of discharge through a proper application for the said purpose and he is free to take all the submission in the said discharge application before the trial court. The prayer for quashing the order taking cognizance is refused.

The application accordingly stands dismissed.

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	NAFR
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