

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18059 of 2011

Arising Out of PS.Case No. -54 Year- 2007 Thana -null District- KATIHAR

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Zakir Hussain @ Quari Zakir Hussain, S/O Md. Sharif, R/O Vill-Udakishunganj,
P.S.-Udakishunganj, Distt-Madhepura

.... Petitioner

Versus

1. The State Of Bihar
2. Hajun Begum, W/o Late Maksood Alam, R/o Vill-Azamnagar, Loghni Tola,
P.S.-Azamnagar , Distt-Katihar

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Abdul Wadood, Advocate
For the Opposite Parties	:	Mr. Mr. Ajit Kumar Singh, Advocate
For the State	:	Mr. Mayanand Jha (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL JUDGMENT
Date: 31-10-2017

The instant criminal miscellaneous has been filed for quashing the order dated 07.12.2010 passed by the learned Chief Judicial Magistrate, Katihar whereby and whereunder he has not accepted the final form submitted by the police and has taken cognizance of the offences under Section 376, 511 and 120(B) of the I.P.C. against the petitioner and one another accused persons in Azamnagar P.S. Case No. 54 of 2007 being G.R. No. 1373 of 2007.

Heard the learned counsel for the petitioner, the learned A.P.P. for the State and the learned counsel for the



opposite party no.2.

Shortly stated the prosecution case is that opposite party no.2 filed a complaint petition on 09.05.2007 alleging that the complainant was cooking the meal of the children of Darul Uloom Madarsa and the petitioner is a teacher of the said Madarsa for the last three years and the accused no.4 (Mr. Mannan) is the Secretary and accused Md. Barik is the member of the said Madarsa. It is alleged that on 07.04.2006 at about 7 P.M. the petitioner took the complainant in his room and forcibly committed rape upon her. It is further alleged that the eight months ago from filing of the instant case the complainant became pregnant of three months for which she gave information to the petitioner regarding the pregnancy. The petitioner again assured her to marry but after the lapse of one week he did not marry with the complainant then the complainant brought the matter before the Secretary Md. Mannan but the secretary told her that during the period of pregnancy the marriage will not be valid. She also told to Margoob Alam regarding the pregnancy. It is alleged that the secretary Md. Mannan told Margoob Alam to give medicine to the complainant for abortion and thereafter accused Margoob Alam gave two tablets to her and after taking those tablet her pregnancy was miscarriaged. It is alleged that



after lapse of Iddat period again the complainant told to the Secretary and member of the Madarsa but they told the complainant that the petitioner will not marry with her and both the persons advised the petitioner to leave the Madarsa and thereafter the petitioner fled away from the said Madarsa and the Secretary of the Madarsa Md. Mannan forcibly ousted the complainant from the Madarsa. The said complaint case was sent to Azamnagar police station for registering the case and for investigation and accordingly the case was registered but after completing investigation final form was submitted as the allegations have not been found true but the learned C.J.M. after deferring with the opinion of the police officer and after perusal of case diary took cognizance under the aforesaid sections under the impugned order.

The petitioner being aggrieved and dissatisfied with the said order challenged the legality, correctness and propriety of the said order on the ground that earlier the opposite party no.2 has filed complaint being Complaint Case No. 675 of 2007 against the petitioner only under Section 493 of the I.P.C. and the learned C.J.M. sent the said complaint petition to the Azamnagar police station under Section 156(3) for registration and to investigate, but in the meantime the complainant filed a petition



to withdraw the said complaint petition saying that due to some mistakes committed by the munshi and typist, she did not want to proceed with that case and the said petition is pending before the learned C.J.M., Katihar. The complainant again filed the second complaint petition before the learned C.J.M., Katihar which had been sent to the Azamnagar Police station giving rise to Azamnagar P.S. Case No. 54 of 2007 wherein totally different story has been alleged. In earlier complaint it was alleged that giving assurance of marriage the petitioner developed sexual relation with her as per her will, but here the story has been changed so the police considered all these facts and also the circumstances filed final form but the learned Magistrate took cognizance after passing the mechanical order. The order has not been passed by the learned C.J.M., he has not written the said order himself or he has not dictated the said order rather some other person has written the order and learned C.J.M. has written the word *Aswikrit, Sangyan and P. file* in the impugned order. The petitioner is innocent and has committed no offence and he has been falsely implicated due to dirty politics of the locality and, as such, the cognizance order is fit to be set aside.

The learned A.P.P. and learned counsel for the opposite party no.2 submit that the learned C.J.M. after perusal of



different paras of the case diary has come to the conclusion that prima facie offense under Sections 376, 511 and 120(B) of the I.P.C. is made out and there is sufficient materials against the accused persons to proceed further and then he has passed the impugned order and, as such, there is no need of any interference by this Court.

Having considered the submissions urged at the Bar going through the impugned order and record and noticing that earlier the opposite party no.2 has filed complaint case bearing Complaint Case No. 675 of 2007 wherein she has stated that after giving assurance of marriage the petitioner developed sexual relationship with her as per her will and later on in this complaint case being C.A No. 1071 of 2007 different story has been alleged which appears not believable, earlier version of the opposite party no.2 cannot be ignored so lightly only due to filing of withdrawal petition, further the impugned order has not been written by the learned C.J.M. or he has not dictated the said order rather someone has written the order and learned C.J.M. has written the word *Aswikrit, Sangyan and P. File* which cannot be termed application of judicial mind at the time of passing the impugned order. Such type of writing the order has been deprecated several times by this Court and, as such, under the



circumstances, the impugned order is hereby quashed.

In the result, this Criminal Miscellaneous stands allowed.

(Jitendra Mohan Sharma, J.)

Rajiv/-

AFR/NAFR	NAFR
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