

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30533 of 2013

Arising Out of PS.Case No. -772 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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Dr. Mahrukh Khan, wife of late Dr. Najimuddin Haider Khan, resident of Ashiana Nursing Home Pvt. Ltd., Ashiana More, Bailey road, P.S.- Rajiv Nagar, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar &
2. Tarique Anis Khan, son of late Anisuddin Haider Khan, resident of Sakoor Colony (Indrapuri), Ashiyana Nagar Road, P.S.-Shastri Nagar (wrongly mentioned in the complaint as Rajeev Nagar), Patna-14

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Mahesh Narayan Parbat, Sr. Advocate with Mr. Sanjay Kumar Jha, Advocate Mr. Pravin Prabhakar, Advocate
For the Opposite Party No.1:		Mr. Abhay Kumar No.1, APP
For the Opposite Party No.2:		Mr. A. K. Choudhary, Advocate Mr. Pawan Kumar, Advocate Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 25-01-2017

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order of cognizance, dated 16.01.2013, passed by the Judicial Magistrate, 1st class, Patna, in Complaint Case No.772-C of 2012 by which the learned Magistrate has taken cognizance against the petitioner under Section 504 Indian Penal Code.

The case of the complainant as per the Complaint Petition is that when the husband of the petitioner was alive, he was



doing business and was Director of Ashiana Nursing Home. In the year 2008, he was in urgent need of money for smooth running of the business. The late husband of the petitioner along with the petitioner approached the petitioner and demanded a sum of rupees sixteen lacs and assured that he will be inducted as Director of Ashiana Nursing Home. On such assurance, the complainant gave rupees sixteen lacs in the month of June, 2008, and accused No.1 (petitioner) and her deceased husband promised that if in any manner he will not be inducted as Director, they will return the money after three years. The complainant made several request to include him as Director in the said business but the accused on one pretext or the other did not accede to the request. The husband of the petitioner died on 24.10.2011 and the complainant made demand of his money then this petitioner promised to return the money and gave cheque of rupees sixteen lacs drawn in the State Bank of India, Sitamarhi Bazar, dated 11.10.2011, duly signed by the deceased husband. When the complainant objected as to why she is giving such a cheque when her husband is not alive then she assured that the cheque is of a joint account and whenever it will be presented in the bank for its clearance, it will be honoured. When it was dishonoured with remark 'insufficient fund', the complainant requested the petitioner to return the money in cash but the



complainant refused. Xerox copy of the cheque along with bank memo is attached with the Complaint Petition. Thereafter, the complainant again visited the Nursing Home on 19.03.2012, on which date the petitioner with the help of other staff assaulted the complainant with fists and slaps and also gave threat to kill. The petitioner snatched the golden chain and other accused snatched wrist watch etc. of the complainant.

The Court below by the impugned order after holding enquiry under Section 202 Cr.P.C. has found *prima facie* case under Section 504 Indian Penal Code against the petitioner only.

It has been submitted on behalf of the petitioner that no offence under Section 504 Indian Penal Code is made out on the basis of the statement of the witnesses recorded under Section 202 Cr. P. C.

On the other hand, counsel for the complainant- Opposite Party No.2 submits that the same impugned order has been challenged by the Opposite Party No.2 before the learned Sessions Judge, Patna, vide Cr. Revision No.820 of 2013, which is still pending before the Sessions Judge, Patna. Counsel for the complainant-Opposite Party No.2 further submits that he has challenged the impugned order of cognizance on the ground that besides offence under Section 504 Indian Penal Code, other offences



as alleged in the Complaint Petition are also made out.

In such circumstances, when a Cr. Revision petition is already pending before the learned Sessions Judge, Patna, against the same impugned order, this Court is of the view that it will be not proper to entertain this quashing application at this stage against the same impugned order.

Therefore, without going into the merits of the impugned order, the instant application is dismissed as withdrawn.

However, it will be open to the petitioner to raise all these points taken in this quashing application before the learned Sessions Judge, at the time of hearing of Cr. Revision application pending before the Sessions Judge, Patna.

(Sanjay Priya, J)

JA/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30-01-2017
Transmission Date	30-01-2017

