

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26393 of 2011

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1. Sarwar Imam S/O Late Haji S.M. Zareef Resident Of Village- Bahera,
P.S- Bahera, District- Darbhanga.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Azmati Khatoon W/O Azizul Resident Of Village- Pakri, P.S- Bahera,
District- Darbhanga.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Iqbal Asif Niazi
For the Opposite Party/s : Mr. S.Ehteshamuddin(App)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

5 02-05-2017 This criminal miscellaneous has been filed for quashing the order dated 30.03.2005 passed by the learned Additional Chief Judicial Magistrate, Benipur, Darbhanga in Bahera P.S. Case No. 192 of 2003 whereby and whereunder, cognizance has been taken under Sections 323, 341, 448 and 376/511 of the Indian Penal Code against the petitioner and consequently for quashing the entire criminal proceeding pending against the petitioner in connection with the present case.

Heard the learned counsel for the petitioner, learned A.P.P. for the State and the learned counsel for O.P. No. 2.

One Azmati Khatoon (O.P. No. 2) wife of Azizul filed a complaint petition vide C.R. No. 206 of 2003 in the Court of



Additional Chief Judicial Magistrate, Benipur, Darbhanga, alleging therein interalia that accused Sarwar Imam is a man of bad character and on 11.08.2003 at about 8:00 P.M. while she was preparing food in her courtyard, petitioner Sarwar Imam came and offered Rs. 50/- to lure her but when she refused, he caught hold her body and attempt to commit rape on her and on resistance she succeeded to save herself. On *halla* the witnesses came there and when she tried to catch hold the accused, he assaulted her with slap. The witnesses have seen the entire occurrence but no one dare to raise his voice, since the accused happens to be the son-in-law of an influential person of the village.

The father-in-law of the accused gave assurance for Panchayti but later on it was refused and then the complaint was filed. The aforesaid complaint was forwarded to Bahera P.S. under Section 156 (3) Cr.P.C. Cr.P.C. for institution and investigation of the case and then Bahera P.S. Case No. 192 of 2003 was registered. The police after proper investigation found the case false and submitted final form on 31.08.2004. The learned Additional Chief Judicial Magistrate, Benipur, Darbhanga differing with the opinion of investigating officer, took cognizance by passing the impugned order.

Submission on behalf of the petitioner is that there is



absolutely no material in the police paper so as to justify a different view taken by the learned Chief Judicial Magistrate. It has further been submitted on behalf of the petitioner that simultaneously three complaints were lodged against the petitioner by different persons but at the behest of one person with whom the petitioner is on inimical terms. All such complaints were filed through one advocate. It has also been submitted that for all such complaints First Information Report was instituted and the police did not find, any one of the cases, referred above, to be true. However, either differing with the opinion of police report or taking the protest, cognizance has been taken in all three cases.

The learned counsel for the petitioner further submitted that all such cases have been lodged at the instance of one Mr. Jane Alam, who was an accused of a case of rape. A Panchyati was held to put some social pressure on Md. Jane Alam and, as such, in Panchayati, petitioner took a pro-active part because of such action taken by the petitioner against Md. Jane Alam that the petitioner is now being harassed with series of cases at the instance of Md. Jane Aalam aforesaid.

From the reading of the First Information Report of the present case, the material collected during investigation, in case diary, it appears that the vague allegation of attempt to rape and



assault has been alleged against the petitioner. The case therefore, appears to be actuated by mala fide motives.

Considering the aforesaid document of the case and the fact that there is nothing on the record to justify a different view in the matter, the order taking cognizance dated 30.03.2005 passed by the learned Chief Judicial Magistrate, Benipur in Bahera P.S. Case No. 192 of 2003 is held to be bad in law. Consequently it is set aside.

This criminal miscellaneous application stands allowed

(Jitendra Mohan Sharma, J)

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