

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50019 of 2013

Arising Out of PS.Case No. -1663 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Dr. Mahrukh Khan W/O Dr. Najimuddin Haide Khan, resident of Ashiana Nursing Home Pvt. Ltd., Ashiana More, Bailey Road, P.S- Rajiv Nagar, District- Patna.
 2. Mumtaz @ Md. Mumtaz Hussain S/O Md. Salim Resident of Village- Dhurwar, P.O- Parsauni, P.S- Parsauni, District- Sitamarhi, Wrongly Mentioned As Ashiana More, Bailey Road, P.S- Rajiv Nagar, District- Patna.
 3. Maharaj @ Maharaj Mahto S/O Late Ram Pratap Mahto Resident of Village Parsauni, P.O- Parsauni, P.S- Parsauni, District- Sitamarhi, Wrongly Mentioned as Ashiana More, Bailey Road, P.S- Rajiv Nagar, District- Patna

.... Petitioners

Versus

1. The State of Bihar
2. Tarique Anis Khan S/O Late Anisuddin Haider Khan resident of Sakoor Colony, (Indrapuri), Ashiyana Nagar Road, P.S- Shastri Nagar (Wrongly Mentioned In Complaint As Rajeev Nagar), Patna- 14

.... Opposite Parties.

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Appearance :

For the Petitioner/s	:	Mr. Mahesh Narayan Parbat, Sr. Advocate Mr. Sanjay Kumar Jha, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O.P. No. 2	:	Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-08-2017

Heard Mr. Mahesh Narayan Parbat, learned Senior Advocate for the petitioners, Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State and Mr. Sanjay Kumar,



learned Advocate for the complainant/opposite party no. 2.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing of the summoning order dated 06.03.2013 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 1663 (C) of 2012 and the entire proceeding arising from the aforesaid complaint in which cognizance has been taken of the offences under Section 323, 341, 379 and 403 of the Indian Penal Code.

3. The case of the complainant, in brief, is that he had given a sum of Rs.2,25,000/- to the husband of the petitioner, namely, Dr. Najimuddin Haider Khan at his request and the request of the petitioner no. 1 in the year 2008 for the purpose of running business of Ashiana Nursing Home. He was assured by the deceased husband of the petitioner no. 1 that he would be inducted as a director in the said nursing home and would be given 50 per cent share in the profit of the said business. However, after taking money, the complainant was neither inducted as a director nor his request in this regard was acceded to. On 27.10.2011, the husband of the petitioner no. 1 died and, after his death, on demand, the petitioner no. 1 had handed over a cheque of Bombay Mercantile Co-operative Bank Ltd. Patna Branch of Rs.2,25,000/-, dated 24.10.2011. It was under the signature of her deceased husband Dr. Najimuddin Haider



Khan. On objection made by the complainant regarding signing of cheque by a person, who was dead, the petitioner no. 1 replied that the cheque was of joint account. However, on presentation, on 22.03.2012, the cheque was dishonoured due to insufficiency of fund in the account. A legal notice in this regard was sent on 06.05.2012 to the petitioner no. 1. It is alleged that on 12.05.2012, the complainant visited her nursing home and requested her to pay the said amount, but he was assaulted by her and her staffs (petitioner nos. 2 and 3) and petitioner no. 1 is alleged to have snatched his golden chain and petitioner nos. 2 and 3 are alleged to have taken away his watch and Rs.2000/- in cash.

4. The complainant was examined on solemn affirmation. Apart from the complainant, two witnesses, namely, Daya Shankar Tiwary and Mukesh Kumar were also examined under Section 202 of the Code of Criminal Procedure in support of the complaint.

5. After having recorded the statement of the complainant and the two inquiry witnesses, the learned Magistrate summoned the petitioners to face trial, vide order dated 06.03.2013, which is under challenge in the present application.

6. Mr. Mahesh Narayan Parbat, learned Senior Advocate appearing for the petitioners has submitted that the petitioners have been made victim of a deep rooted conspiracy and the present case



has been filed with mala fide intention to put undue pressure on them. He has submitted that the petitioner no. 1 is a qualified MBBS doctor having her nursing home in the name and style of Ashiana Nursing Home situated at Ashiana More, Bailey Road, Patna. The said nursing home had been constructed by her and her deceased husband, who was also a doctor, after taking loan from the bank and investing their own money. He has submitted that the petitioner no. 1 originally belonged from the State of Jammu and Kashmir and after her marriage with Dr. Najimuddin Haider Khan of Parsauni Estate, Sitamarhi, she started residing with him in the State of Bihar and a daughter was born out of the said wedlock, who is also a qualified MBBS doctor and, at present, she is residing in her matrimonial house. He has submitted that the petitioner no. 1 and her deceased husband from their own earning had purchased various properties at Parsauni, Patna and Delhi. Her husband was sole heir of his deceased father, namely, late Raja Salauddin Haider Khan and the petitioner no. 1 and her daughter came in possession of ancestral and other properties of her deceased husband on the basis of will of her husband made by him in his life time. So far as petitioner nos. 2 and 3 are concerned, they are residents of village- Parsauni and care taker of properties of petitioner no. 1 at Parsauni Estate, Sitamarhi and they never resided at Patna or worked as staff of Ashiana Nursing



Home at Patna.

7. He has submitted that the complainant Tarique Anis Khan is the cousin of the deceased husband of the petitioner no. 1. He has submitted that the complainant with an intention to grab the properties of petitioner no. 1 has started torturing, threatening and harassing her in various ways for which she has filed several applications before the authorities of the police and other competent authorities. He has submitted that after death of her husband, the petitioner no. 1 had received a legal notice dated 06.05.2012. The said legal notice was duly replied with by the lawyer of the petitioner no. 1 on 15.05.2012 in which it was categorically stated that it is unbelievable that any person would accept any cheque signed by a dead person because it is well known fact that after death of an account holder of any bank, neither any transaction can be done in his account by any one nor any cheque can be honoured on his account without order of competent court or authority. He has submitted that being cousin brother of late Dr. Najimuddin Haider Khan, the complainant was in possession of blank leaves of cheques or has managed it and taking benefit of sudden death of the husband of petitioner no. 1, he is trying to blackmail and extract money from petitioner no. 1.

8. He has further contended that the complainant has



neither given any date of alleged advance of Rs.2,25,000/- to the deceased husband of petitioner no. 1 nor had produced any chit of paper in support of the alleged claim of advance of money. He has submitted that even prior to the institution of the present complaint, the complainant with *mala fide* intention had filed another case bearing Complaint Case No. 772 (C) of 2012 against the petitioners in respect of the occurrence, which is said to have taken place on 16.01.2012. From perusal of the aforesaid complaint, it would be manifest that the entire allegations made in the present complaint are the same except that the amount of cheque in that complaint is alleged a sum of Rs.16,00,000/- in place of Rs.2,25,000/-(in the present complaint), which was drawn on State Bank of India. He has submitted that both the witnesses examined in earlier complaint are also the same. He has contended that if there was any truth behind the allegations made in the first complaint, then in that case, the complainant would not have visited again the nursing home of the petitioner no. 1.

9. On the other hand, Mr. Sanjay Kumar, learned Advocate appearing for the complainant has submitted that the allegations are of serious nature against the petitioners and the court of Magistrate has rightly summoned the petitioners on the basis of allegations made in the complaint and the statements of witnesses recorded in course



of inquiry. He has submitted that it is not a case of malicious prosecution, rather it is a case in which the complainant has been cheated by the petitioner no. 1 and her deceased husband and when a demand was made in this regard, deliberately, the petitioner no. 1 handed over a cheque, which was signed by her husband knowing fully well that there was insufficient fund in the account and, thus, the intention of the petitioner to cheat the complainant right from the beginning can easily be inferred. He has further contended that there is nothing wrong in filing two complaints if the version in the two complaints are different and they are in respect of two different incidents .

10. I have heard learned counsel for the parties and perused the record.

11. In sum and substance, the allegation against the petitioner no. 1 is that she had given cheque signed by her husband to the complainant and it was not honoured by the bank due to insufficient fund and that she along with other two petitioners had assaulted the complainant on 12.05.2012 when he went to her nursing home to ask for money and his golden chain, wrist watch and Rs.2000/- were taken away. It is not disputed that complainant is cousin brother of the deceased husband of petitioner no. 1. It also stands admitted that prior to institution of the present complaint, the



complainant had instituted Complaint Case No. 772 (C) of 2012 on 24.03.2012 in which summoning order was passed only against petitioner no. 1 on 16.01.2013 for the offence punishable under Section 504 of the Indian Penal Code only. The said complaint petition has been brought on record as Annexure-5 to the present application. From a perusal of the said complaint, it would be manifest that the entire allegations are verbatim the same except minor changes made here and there. The changes are in respect of amount and name of the bank of which cheque was issued. The witnesses and accused are all the same. In Complaint Case No. 772 (C) of 2012, the complainant has alleged that he had visited nursing home of accused no. 1 on 16.01.2012 when he was assaulted by the petitioners of the present case and his golden chain, watch and Rs.2000/- was snatched whereas in the present also, the complainant has alleged that when he visited the nursing home of the petitioner no.1 on 12.05.2012 to make demand for money, the accused persons assaulted him and snatched away his golden chain, watch and Rs.2000/- in cash.

12. It appears to be highly improbable that if an occurrence, as alleged in Complaint Case No. 772 (C) of 2012, had taken on 16.01.2012, the complainant would have visited the nursing home of petitioner no. 1 once again on 12.05.2012. It is also highly



unbelievable that a lady doctor, having a married daughter, who is also a doctor and who runs a reputed nursing home in the township of Patna would have indulged in the act of snatching golden chain, watch and Rs.2000/- from the complainant, who is cousin brother of her deceased husband and that too on two different occasions.

13. I am of the view that the allegations made in the complaint are not only improbable, but they have been made with ulterior motive for wreaking vengeance of the accused and with a view to spite her due to private and personal grudge.

14. It is well settled position in law that this Court in exercise of powers under section 482 of the Code of Criminal Procedure would be justified to quash a criminal complaint in order to prevent an abuse of the process of court and to secure the ends of justice.

15. In that view of the matter, the impugned order dated 06.03.2013 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 1663 (C) of 2012, is hereby quashed. The application stands allowed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.08.2017
Transmission Date	15.08.2017

