

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19303 of 2014

Arising Out of Case No. -2874 Year- 2012 Thana -SIWAN COMPLAINT CASE District- SIWAN

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Kanti Devi, W/O Binod Bharti Resident of Village- Pokhara Mathia, P.S. -
Maharajganj, Dist : - Siwan.

.... Petitioner/s

Versus

1. The State of Bihar
2. Nityanand Giri son of Late Sharvan Giri resident of Village- Karnpura Mathia,
P.S. - Gautam Budh Marg, Dist. - Siwan.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 28-06-2017

Heard learned counsel for the petitioner and the learned
A.P.P. No one appears on behalf of the O.P. No. 2, though the
name of learned counsel for the O.P. No. 2 is appearing in the
cause list.

2. The petitioner has challenged order dated 19.09.2013
passed in Complaint Case No. 2874 of 2012 by the learned Judicial
Magistrate, Siwan, whereby he has taken cognizance of offence
under Section 504 of the Indian Penal Code and issued summons to
the petitioner for her appearance.

3. Learned counsel for the petitioner submits that



complainant has lodged a false case against the petitioner, as the petitioner's husband, being a witness in Complaint Case No. 250 of 2010 in which Nityanand Giri, the present complainant and his elder brother Vijay Kumar Giri along with others are accused. In that complaint case, petitioner's husband has given evidence against Nityanand Giri. However, the crux of allegation in the complaint is that the petitioner had taken help of Rs. 15,000/- from the complainant for medical treatment of her husband. The complainant, O.P. No. 2 asked her to return back money then she abused and threatened to lodge a false case against him.

4. Learned A.P.P. supports the impugned order.

5. Having considered the rival submissions, it appears that only allegation against the petitioner is that she abused and threatened to lodge a false case against the complainant on being asked to return back Rupees fifteen thousand given as monetary help to the petitioner. Section 504 of the Indian Penal Code reads as under:

504. Intentional insult with intent to provoke breach of the peace.- Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”



6. In view of this section, insult must be of such magnitude causing provocation to a person for the same he may break the public peace or may commit any other offence. In the present complaint, even words alleged to be used as offending word is not expressed in the complaint; so ingredient of intentional insult coupled with intention to provoke breach of peace is absent in the complaint. Petitioner has also brought on record Annexure-2, a copy of the complaint case no. 250 of 2010, a case lodged by wife of Vijay Kumar Giri, under Section 498A and other sections of the penal code, against her husband Nityanand Giri, complainant of the present case. In aforesaid complaint case, Binod Bharti, husband of Kanti Devi (petitioner) is named as witness thereafter Vijay Kumar Giri, brother of Nityanand Giri, has also filed subsequent Complaint Case No. 2810 of 2011 against Binod Bharti. So the petitioner and complainant appear on inimical terms hence the case of the complainant giving monetary help of Rs. 15,000/- to the petitioner, wife of Vinod Kumar Giri, appears absurd and improbable. The petitioner's husband has given evidence in support of Complaint Case No. 250 of 2010 in which Nityanand Giri and his brother Vijay Kumar Giri are accused. So in order to wreck personal vengeance the present complaint case appears to have



been filed. Hence, continuation of the present proceeding would be an abuse of the process of the court. Accordingly, the criminal proceeding including the order taking cognizance dated 19.09.2013 passed in Complaint Case No. 2874 of 2012 is set aside. The petition stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.07.2017
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