

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41818 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

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1. Arun Kumar, s/o late Nanhku Singh, resident of Mohalla- K 509, Hanuman Nagar, P.S.- Patrakar Nagar, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Veermani @ Birmani, s/o Shri Ram Lakhan Prasad Singh, resident of Mohalla- Chandmari Road, P.S.- Kankarbag, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate

For the Opposite Party/s : Mrs. Rina Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 12-09-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 25.07.2011 passed by the Judicial Magistrate, 1st class, Patna, in Complaint Case No.1685-C of 2011 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner for the offence under Section(s) 420, 504 Indian Penal Code.

2. Counsel for the petitioner has submitted that the instant criminal prosecution lodged by the Complainant against this petitioner is malicious prosecution. The petitioner has earlier filed Complaint Case against the Opposite Party No.2 in the Court of the Chief Judicial Magistrate, Patna, vide Complaint Case No.2941 of 2010 on 27.10.2010 in which after enquiry the court below found *prima facie* case against



the Opposite Party No.2 for the offence under Section(s) 471, 467, 468, 406 Indian Penal Code. Copy of the Complaint Petition filed by petitioner against the Opposite Party No.2 as well as order dated 30.03.2011 have been annexed as Annexure-3 and 4 to the application. The Opposite Party No.2 appeared in that case on 09.05.2011 by filing vakalatnama as will appear from the order dated 09.05.2011 annexed as Annexure-5 to the petition. Anticipatory bail application of the Opposite Party No.2 was rejected by the learned Sessions Judge, Patna, in that case on 29.06.2011.

3. The Complainant-Opposite Party No.2 in the instant case by suppressing all these material facts has filed present complaint only to harass the petitioner. The Opposite Party No.2 did not bring to the notice of the Court below about the earlier case filed by this petitioner on 27.10.2010 vide Complaint Case No.2941-C of 2010.

4. Counsel for the petitioner has further submitted that in the instant case, Complainant-Opposite Party No.2 has alleged the date of occurrence from 15.02.2010 and the complaint was filed on 23.06.2011, but there is no explanation of such delay in filing the complaint.

5. Counsel for the petitioner has drawn attention to Annexure-5 to show that in the Complaint Case filed by the petitioner Opposite Party No.2-Complainant had appeared and filed a petition



under Section 205 Cr. P. C. as will appear from the order dated 09.05.2011 passed in that case, but all these facts including filing of the earlier case by this petitioner against the Complainant-Opposite Party No.2 was concealed and not disclosed in the instant Complaint Petition.

6. Petitioner has submitted that, in fact, cheques issued by the Opposite Party No.2 amounting to rupees six lacs got bounced and cognizance was taken against the Opposite Party No.2 in Complaint Case No.2941-C of 2010 and her anticipatory bail was also rejected in that case but then in order to avoid appearance in that case and also to harass the petitioner, Opposite Party No.2 has filed the instant case on total wrong facts and statement made in the Complaint Petition. The Court below without appreciating the case as well as the allegation in the Complaint Petition in mechanical manner found *prima facie* case against the petitioner for the offence under Section(s) 420, 504 Indian Penal Code.

7. In such circumstances, this Court is of the view that the instant complaint filed by the Opposite Party No.2 is malicious prosecution and has been filed just to harass the petitioner with ulterior motive and wrecking vengeance on the petitioner with a view to spite him.

8. In the facts and circumstances of the case, impugned order dated 25.07.2011 passed by the Judicial Magistrate, 1st class,



Patna, in Complaint Case No.1685-C of 2011 along with entire criminal proceeding against the petitioner is hereby quashed.

9. This application is, accordingly, allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	05-10-2017
Transmission Date	05-10-2017

