

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33086 of 2014

Arising Out of PS.Case No. -34 Year- 2012 Thana -INDUSTRIAL District- BHAGALPUR

=====

Jyoti Sinha, Daughter of Sahdeo Kumar, Resident of Village - Ajaipur, P.O. - Ajaipur, Police Station - Noor Sarai, District – Nalanda.

.... Petitioner.

Versus

1. The State of Bihar.
2. Pummy Rani alias Pummy, Wife of Sumant Kumar, at present village - Itasang, Police Station - Rahui, District - Nalanda

.... Opposite Parties.

=====

Appearance :

For the Petitioner : Mr. Digvijay Pratap Singh, Advocate.

For the State : Mr. Uma Nath Mishra, A.P.P.

For the Opposite Party No.2 : None.

=====

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 03-08-2017

Heard learned counsel for the petitioner and the learned A.P.P. for the State. No one appears on behalf of the opposite party no.2 despite valid service of notice on her.

2. This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 21.02.2014 passed in Complaint Case No.C-1999 of 2013, whereunder the court of the Judicial Magistrate, First Class, Bhagalpur, summoned the accused-petitioner, on inquiry, under Section 204 of the Code of Criminal Procedure, finding prima facie case under Sections 406, 504 and 506 of the Indian Penal Code.



3. The facts, leading to this application, is that on the basis of the written report of the opposite party no.2, Industrial Region Case No.34 of 2012 was instituted under Sections 420, 504 and 506 of the Indian Penal Code against the accused-petitioner in which the opposite party no.2 Pummy Rani alias Pummy alleged that the petitioner Jyoti Sinha, aged about 23 years, is the student of Computer Science at BCE, Bhagalpur, who developed illicit relation with her husband Sumant Kumar. When she tried to convince her on mobile phone, she started to abuse her and threatened to kill her and her parents. The petitioner used to blackmail Sumant Kumar, husband of the opposite party no.2, to extort the money to him. Due to that reason, Sumant Kumar, the husband of the informant, deposited Rs.14,000/- in the account of Sahdeo Kumar, the father of the petitioner, for expenses of the study of the petitioner. As such, the opposite party no.2 is suffering from mental agony.

4. After investigation, the police submitted the final form on 11.10.2012 arriving at the conclusion that the case is false. The Protest Petition filed by the opposite party no.2 was treated as complaint petition, numbered as Complaint Case No.C-1999 of 2013. In inquiry under Section 204 of the Code of Criminal Procedure, the complainant-opposite party no.2 gave her solemn affirmation and one Ram Nandan Prasad, was examined as a witness. Thereafter, the



Judicial Magistrate, First Class, Bhagalpur, summoned the accused-petitioner, on enquiry, under Section 204 of the Code of Criminal Procedure, finding prima case under Sections 406, 504 and 506 of the Indian Penal Code through the impugned order.

5. Learned counsel for the petitioner submits that from perusal of the First Information Report and also the protest petition, it appears that no offence under Section 406 of the Indian Penal Code is made out against the petitioner. So far as the offence under Sections 504 and 506 of the Indian Penal Code is concerned, the same is also not made out due to lack of ingredients thereof. Further submission is that the specific allegation against the petitioner is of developing physical relationship with the husband of the opposite party no.2 and to blackmail the husband of the opposite party no.2, due to which the husband of the opposite party no.2 deposited Rs.14000/- in the account of the father of the petitioner but Sumant Kumar, the husband of the opposite party no.2 was not examined during inquiry under Section 202 of the Code of Criminal Procedure to substantiate the allegation.

6. For constituting an offence under Section 406 of the Indian Penal Code, the entrustment of the property to a person and breach of trust by that person is required but there is nothing on the record to show that any property was entrusted to the petitioner and



the petitioner committed breach of trust. So far as the offence under Sections 504 and 506 of the Indian Penal Code is concerned, it is alleged in the complaint petition that the opposite party no.2 talked with the petitioner on mobile and she abused and threatened. As such, there is no material to show that the petitioner insulted the opposite party no.2 with an intent to provoke breach of peace and cause to hurt to the opposite party no.2. As such, summoning the accused-petitioner, on inquiry, under Section 204 of the Code of Criminal Procedure, for offence under Sections 406, 504 and 506 of the Indian Penal Code through the impugned order is illegal and amounts to an abuse of the process of the court.

7. Accordingly, the impugned order dated 21.02.2014 passed in Complaint Case No.C-1999 of 2013, summoning the accused-petitioner, on enquiry, under Sections 406, 504 and 506 of the Indian Penal Code by the court of the Judicial Magistrate, First Class, Bhagalpur, is hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.08.2017.
Transmission Date	16.08.2017.

