

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.53742 of 2013

Arising Out of PS.Case No. -633 Year- 2009 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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Dinesh Prasad Son of Late Kisun Prasad Resident Of Village - Onda, P.S. Bind,
District - Nalanda

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Braj Kishore Prasad Sinha, Advocate

For the Opposite Party/s : Mr. Surendra Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C A V JUDGMENT

Date: 01-09-2017

Heard learned counsel for the parties.

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing of order dated 05.10.2012 passed by the learned Sub-Divisional Magistrate, Biharsharif, Nalanda in Complaint Case No. 633C of 2009 whereby the learned court below took cognizance against the petitioner under Sections 323, 341 and 504 of the Indian Penal Code and also issued summons against the petitioner.

The brief facts of this case is that the marriage of daughter of the complainant was settled with one Shailendr Kumar, who is son of the petitioner on the promise to give gift such as Rs. 2,81,000 cash, one motorcycle and 2 bhar gold and accordingly he gave Rs. 1,31,000/- and 2 bhar gold to the petitioner. Thereafter when the complainant went to fix the date of marriage, the petitioner along with other accused persons refused to fix the date



without fulfillment of the demand of motorcycle and on account of that the parties have arrived at hot exchange of words and decided to return the gift but the petitioner did not return the entire amount and gold and when the complainant went to his house asking for return of the cash and articles, the petitioner threatened him and denied to return anything and complainant left with no option lodged the entire complaint case.

Learned counsel for the petitioner has submitted that there is general and omnibus allegation against the petitioner and the petitioner has falsely been implicated in this case only to put pressure on the petitioner to perform marriage of his son with the daughter of complainant. As a matter of fact, the occurrence is said to have taken place on 17.12.2007 and complaint- cum-protest petition has been filed on 28.01.2008 and the learned S.D.J.M., Biharshrif after going through the evidence of witnesses found the allegation of demand of dowry and motorcycle made by the petitioner false and fabricated, however, cognizance under Sections 323, 341 and 504 of the Indian Penal Code has been taken against the petitioner on 05.10.2012 after lapse of four years, the delay itself shows that the cognizance is barred by law of limitation but the court below without appreciating the material on record has taken cognizance in a routine manner. On the above ground, it is submitted that the cognizance order is bad in law and is fit to be quashed.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioner and the court below after going through the materials available on record has found a prima facie case made out against the petitioner and rightly taken cognizance for the offences under Sections 323, 341 and 504 of the Indian Penal Code. Therefore, the order taking cognizance does not require any interference.



From perusal of the material on record and looking into the facts of the case, at this stage, it appears that admittedly the learned S.D.J.M., Biharshrif after going through the evidence of witnesses found the allegation of demand of dowry and motorcycle by the petitioner to be false and fabricated but the learned Magistrate finding prima facie case against the petitioner took cognizance under Sections 323, 341 and 504 of the Indian Penal Code after lapse of four years from the date of filing of complaint-cum- protest petition. The delay comes under the purview of law of limitation. Therefore, this Court feels it proper to refer Section 468 Cr.P.C., which is quoted hereinunder;

“468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year; (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

From bare perusal of the provisions of Section 468 (2)(c) Cr.P.C., it is quite apparent that if the offence is punishable with imprisonment of one year and not more than three years, cognizance, thereof, should be taken within a period of three years from the date of institution of the case. Here, in this case, the cognizance has been taken by the Magistrate for the offences under Section 323, 341 and 504 of the Indian Penal Code, punishable for one year, one month and two years of imprisonment, respectively,



after lapse of four years from the date of filing of complaint-cum-protest petition, therefore, the same is covered under the provisions of Section 468(2)(c) Cr.P.C. and the same cannot be overlooked.

In view of the aforesaid provisions, the order taking cognizance, being barred by law of limitation, dated 05.10.2012 is, hereby, quashed.

This application is , accordingly, allowed.

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	05.09.2017
Transmission Date	05.09.2017

