

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10294 of 2015

Arising Out of PS.Case No. -18 Year- 2013 Thana -SARAN COMPLAINT CASE District- SARAN

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Prakash Upadhaya @ Prakash Kumar Upadhaya Son of Shashi Bhusan Upadhaya, Resident of Village - Madhopur, P.S. Rasoolpur, District -Saran currently residing at 774/4, Street No. 14, Rajnagar - 2, Delhi.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Rajendra Pandey Son of Late Radha Krishna Pandey, Resident of Village - Dahiyawan Brahman Toli, P.S. - Chapra Town, District - Chapra, Saran.

.... Opposite Party/s

with

Criminal Miscellaneous No.3735 of 2015

Arising Out of PS.Case No. -18 Year- 2013 Thana -SARAN COMPLAINT CASE District- SARAN

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Shashi Bhushan Upadhaya S/O Late Dhrupdev Upadhay Resident of vill-Hasepur,P.S-Ekma,Distt.-Saran

.... Petitioner/s

Versus

1. The State of Bihar
2. Rajendra Pandey S/O Late Radha Krishna Pandey Resident of vill-Dahiyawan Brahman Toli,P.S-Chapra Town,Distt.-Chapra,Saran

.... Opposite Party/s

Appearance :

(In Cr.Misc. No.10294 of 2015)

For the Petitioner : Mr. Y.V.Giri, Sr. Advocate
Mr. Ashish Giri

For the O.P.No.2 : Mr. Anant Kumar Bhaskar
Mr. Sanjay Kumar Jha

For the State : Mr. Nirmal Kumar Sinha (App)

(In Cr.Misc. No.3735 of 2015)

For the Petitioner : Mr. Y.V.Giri, Sr. Advocate
Mr. Ashish Giri

For the O.P.No.2 : Mr. Anant Kumar Bhaskar
Mr. Sanjay Kumar Jha

For the State : Mr. Nirmal Kumar Sinha (App)

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL ORDER

4 08-01-2018

Both the applications (Cr. Misc. No. 10294 of 2015 and



Cr. Misc. No. 3735 of 2015) are being disposed of by this common judgment/order as same impugned order is under challenge in both applications.

Heard learned Counsel for the petitioners as well as the learned Counsel for the State as also the learned Counsel appearing on behalf of Opposite party No. 2.

The petitioners seek quashing of the cognizance order dated 22.10.2013 passed by learned SDJM Chapra in Complaint Case No. 18 of 2013, thereby taking cognizance of the offence under Section 406 of the IPC.

The brief fact giving rise to the case is that the complainant Rajendra Pandey (Opposite party No. 2) entered into negotiation of marriage of his daughter with Adarsh Upadhyay, son of Shashi Bhushan Upadhyay. It is further alleged that on 22.6.2012 engagement was done and complainant incurred Rs. 1,25,000/- in that ceremony. A week after Shashi Bhushan Upadhyay, father of the bridegroom, started making pressure for giving Rs. Three Lakhs for doing necessary purchase for the purpose of marriage. The complainant managed the amount and on 11.7.2012 handed over to him in presence of witnesses. On 29.10.2012 in order to fix the date of marriage, the complainant along with others went to the house of Shashi Bhushan Upadhyay, who further demanded Rs. Two Lakhs more as well as one Maruti car, other accused persons also came out from inside the house and reiterated the demand. The complainant expressed his inability to



meet the further demand and requested that if not ready to solemnize the marriage then return back Rs. Three Lakhs cash given to Shashi Bhushan Upadhyaya and also Rs. 1,25,000/- incurred in engagement ceremony.

Learned Counsel appearing on behalf of the petitioners submits that as far as Prakash Upadhyaya @ Prakash Kumar Upadhyaya (the petitioner of Cr. Misc. No. 10294 of 2015), is concerned, there is no specific allegation against him, except making bald statement that he too came out from the house and joined his father Shashi Bhushan Upadhyaya and reiterated the demand. The allegation is that money was demanded by Shashi Bhushan Upadhyaya and it was given to him and this petitioner has neither made any demand nor received any demand nor he was the prospective bride-groom and now a days it is the general tendency to rope in all family members in such cases where marriage negotiation breaks down or in the case of 498A IPC and under the Dowry Prohibition Act.

Further argument raised by the learned Counsel is that even no prima facie offence under Section 406 is attracted in this case as there is lack of any allegation of entrustment or any dishonest or fraudulent intention on the part of the accused Shashi Bhushan Upadhyaya to misappropriate any amount. Even as per allegations made he was given Three Lakhs rupees and incurred the money on purchasing marriage items, therefore no ingredient of breach of trust is attracted.



Learned Counsel for Opposite party No. 2 vehemently opposed the applications and submits that prima facie offence under Section 406 IPC is made out as demand of dowry was made by Shashi Bhushan Upadhyaya and it was paid to him, but later on he retracted from the commitment to marry his son with the daughter of the complainant. On account of making further demand the marriage negotiation broke down and money taken by the accused was not returned back so money was entrusted to him for the purpose of marriage but neither the marriage was solemnized nor money was returned back.

Having considered the rival submissions of both sides and on perusal of the record the Court finds that as far as Prakash Upadhyaya @ Prakash Kumar Upadhyaya (petitioner of Cr. Misc. No. 10294 of 2015) is concerned, except bald statement and casual reference of his name by leveling general and omnibus allegations that he too came out of the house along with others in support of his father's demand, there is no other material, so except casual reference of his name there is lack of any allegation, hence no prima facie offence being made out against him, so putting him to ordeal of trial would be abuse of the process of the Court and not in the interest of justice. So entire criminal proceeding inclusive of the cognizance order dated 22.10.2013 as far as Prakash Upadhyaya @ Prakash Kumar Upadhyaya is concerned is hereby set aside.

The case of Shashi Bhushan Upadhyaya stands on different



footing to that of Prakash Upadhyaya. There is specific allegation against him that he made demand of Rs. Three Lakhs and same was delivered to him by the complainant however he retracted from the negotiation of marriage of his son Adarsh Upadhyaya with the daughter of the complainant as further demand of dowry was not fulfilled by the complainant. Even as per allegation money paid by the complainant was also not returned on demand, so in view of back drop of such facts it cannot be said that no offence is made out. Therefore, the application of Shashi Bhushan Upadhyaya is dismissed and the criminal proceeding will further proceed against him in accordance with law.

However, the observation made in this order is only with reference to the cognizance order and will not prejudice the case of either party in course of trial.

(Arun Kumar, J.)

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