IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46655 of 2014

Arising Out of PS.Case No. -409 Year- 2012 Thana -EAST CHAMPARAN COMPLAINT District- EASTCHAMPARAN(MOTIHARI)

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1. Fani Bhushan Prasad, son of late Virat Pratap Kushwaha, resident of village- Bijdhari, Police Station- Kesariya, District- East Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Anita Devi, W/o Santosh Kumar Mishra, resident of village- Bijdhari, Police Station- Kesaria, District- East Champaran

.... Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Mr. APP

Mr. Pramod Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 20-04-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 23.04.2014 passed by the Judicial Magistrate, 1st class, Sadar, Motihari, in Trial No.5641 of 2014/ Complaint Case No.409 of 2012 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 379, 420, 120-B Indian Penal Code.

Counsel for the petitioner has submitted that prior to lodging of the instant case the petitioner had filed a complaint case vide Complaint Case No.3014 of 2011 against the husband of the Complainant, which was sent to P.S. under Section 156(3) Cr. P.C.

upon which Kesaria P.S. Case No.33 of 2012 was registered. Counsel for the petitioner has submitted that the police after investigation has submitted charge-sheet in that case and the Court has taken cognizance for the offence 406, 420 Indian Penal Code and Section 138 of the Negotiable Instruments Act. Instant case has been filed just to save skin from the case filed by the petitioner against the husband of the Complainant.

Learned counsel for the petitioner has submitted that husband of the Complainant has taken Rs.3,50,000/- from the petitioner and in lieu of return of amount he issued cheque of Rs.3,50,000/-, which got bounced on account of insufficient fund. Details of the allegation has been mentioned in the complaint filed vide Complaint Case No.3014 of 2011, which has been annexed as Annexure-2.

In the instant case, allegation is made by the Complainant that the husband of the Complainant is posted in CRPF, Delhi. Petitioner used to come to house of the Complainant and drink wine together with the husband of the Complainant. There is joint account of the Complainant in Kesaria State Bank with her husband in which her husband used to send money. The petitioner got cheque issued in the aforesaid account by giving application in the bank for her husband and also got his signature on the blank cheque leaves while taking drink of wine with the husband of the Complainant. The Complainant got knowledge of the aforesaid act later on. She wrote letter to the Bank to stop payment of the aforesaid cheques. It is alleged that husband of the Complainant put signature on three blank cheques as mentioned in para 7 of the complaint. The petitioner after entering amount Rs.3,50,000/- on one of the cheque deposited the same in the bank, which was not encashed due to insufficient fund. The petitioner gave one legal notice to the husband of the Complainant, which has been replied on behalf of husband of the Complainant. The Complainant has also alleged that two more blank cheques are with the Complainant out of which one of the cheques has also been presented by the petitioner which got bounced due to insufficient fund.

Counsel for the Complainant has submitted that two cases are filed by the Complainant, which are pending.

This Court after looking into the allegation made in the Complaint filed by the petitioner against the husband of the Complainant vide Complaint Case No.3014 of 2011 finds that this petitioner has levelled allegation that cheque amounting to Rs.3,50,000/- was given by the husband of the Complainant to the petitioner and when the aforesaid cheque was presented in the bank, same was not encashed due to insufficient fund. That complaint was filed on 22.12.2011. Aforesaid complaint was sent to the P.S. under Section 156 (3) Cr. P. C. and thereafter police registered Kesaria P.S. Case No.33 of 2012 for the offence under Section(s) 406, 420 Indian Penal Code and Section 138 of the Negotiable Instruments Act. The police after investigation has submitted charge-sheet in that case and cognizance has also been taken. Thereafter, on 21.02.2012, present complaint has been filed by the Complainant against the petitioner levelling allegation that this petitioner got signature on three blank cheques from the husband of the Complainant under the influence of wine and he has misused one of the cheque by presenting the same in the Bank, which got bounced for which he also sent legal notice.

In this manner, it appears that instant case has been filed after filing of the case by the petitioner against the husband of the Complainant vide Complaint Case No.3014 of 2011 as a defence to save skin from the allegation made in that case.

Therefore, this Court is of the view that instant case filed by the Complainant is nothing but an attempt to put pressure on the petitioner to not contest the earlier case filed by him against the husband of the Complainant.

In view of such, continuance of the criminal proceeding against the petitioner will be abuse of process of law.

Accordingly, impugned order dated 23.04.2014 passed by the Judicial Magistrate, 1st class, Sadar, Motihari, in Trial No.5641 of 2014/ Complaint Case No.409 of 2012 along with entire criminal proceeding against the petitioner is hereby quashed.

This application is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	**AFR**
CAV DATE	**N/A**
Uploading Date	**03-05-2018**
Transmission Date	**03-05-2018**