

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.4770 of 2017

Arising Out of PS. Case No.-268 Year-2015 Thana- RAMPUR District- Gaya

Kunal Kumar Son of Manoj Kumar, Resident of Mohalla- Moriya Ghat, P.S.-
Kotwali, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Neha Naz

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjeev Kumar, Advocate
For the Opposite Party/s : Mr.Shyam Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL ORDER

5 13-12-2019 Heard learned counsel for the petitioner as well as
learned APP for the State.

2. The petitioner has challenged, in this application under Section 482 of the Cr.P.C., the order of cognizance dated 31.03.2016 passed in Rampur P.S.Case No.268 of 2015 by the learned ACJM, Gaya whereby the learned court below has taken cognizance for offence under Sections 354 and 509/34 of the Indian Penal Code.

3. Learned counsel for the petitioner submits that a bare perusal of the FIR or statement of only witness examined during investigation of the case, would reveal that no offence under Sections 354 or 509/34 of the Indian Penal Code is made out. His submission is that the ingredients of offence of stalking as defined under Section 354-D of the Indian Penal Code is also not made out though the allegation bleakly reassembles with that offence. Therefore, criminal prosecution of the petitioner is an abuse of the process of the Court.



4. According to FIR, the informant along with her grand-mother had gone to withdraw money from the bank on 01.11.2015. Two boys following the girl came to the bank, thereafter the informant asked her grand-mother to sit and she reached at the counter. The two boys followed her there and stood by her from both sides touching her. When the informant came out of the bank along with her grand-mother, they asked the grand-mother to go and were gazing at the informant. The FIR reveals that she requested to the police to act according to law. One of the boys, i.e., the petitioner was apprehended by the police at the spot and another managed to escape away. Witness Arun Kumar Choudhary is a bank staff. He stated that the informant along with her grand-mother had come to the bank, two boys stood touching her at the counter and were inappropriately looking at the girl.

5. The Criminal Law Amendment Act, 2013 effective from 03.02.2013 brought about certain amendments in the Indian Penal Code also which includes addition of certain offences after Section 354 of the Indian Penal Code as 354-A to 354-D. Section 354-A deals with sexual harassment and punishment for sexual harassment and reads as follows:-

354-A: (1) A man committing any of the following acts--



(i) physical contact and advances involving unwelcome and explicit overtures; or -----

Section 354-D. Stalking. – (1) Any man who--

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that –

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

6. Considering the crux of the complaint of the informant, in my view, *prima facie*, offence under Section 354-A(1)(i) as well as offence under Section 354-D of the Indian Penal Code are apparently made out against the petitioner and the proviso to Section 354-D above would come into play only at the stage of trial.

7. Considering the aforesaid fact, this application has got no merit and, accordingly, it stands dismissed.

(Birendra Kumar, J)

B.Kr./-

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