

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21294 of 2015

Arising Out of PS. Case No.-387 Year-2012 Thana- SITAMARHI COMPLAINT CASE
District- Sitamarhi

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1. Tanweer Alam, Son of Abdul Khair, resident of Garha, P.S. Pupri, District Sitamarhi
 2. Ahmad Ali, Son of Late Nayeemuddin, resident of village Kanhwa, P.S. Bela, District Sitamarhi
 3. Jamil Ahmad Siddiqui, Son of Late Khalil Hafiz, resident of village – Bariyarpur, P.S. Sitamarhi, District Sitamarhi
 4. Khurshida Begum, wife of Jamil Ahmad Siddique, resident of village Bariyarpur, P.S. Sitamarhi, District Sitamarhi

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Mansoor Alam, Son of Md. Wasir, resident of village Mirjapur, P.S. Baspatti, District Sitamarhi

... .. Opposite Party/s

Appearance :

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

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date : 31-07-2019

Heard the parties.

2. Opposite Party No. 2-Md. Mansoor Alam had filed Pupri P.S. Case No. 19 of 2012 against the petitioners for offences under Sections 328 and 307/34 of the Indian Penal Code with allegation that the complainant had gone to his *Sasural* where the petitioners pressurized the complainant to give divorce to his wife. The complainant did not agree then the accused persons administered poison to the complainant with intent to kill him. The complainant became unconscious. The motive behind the occurrence was that wife of the complainant was in extra marital



relation with her brother-in-law and she wanted to take divorce from the complainant to get permanent company of the brother-in-law.

3. After investigation, the police had not sent up the petitioners for trial and final form was accepted by the learned Magistrate. However, a protest was already there on the record which was treated as Complaint Case No. 387 of 2012. After inquiry, the learned Magistrate dismissed the complaint petition under Section 203 Cr.P.C. by the order dated 03.04.2013. The said order was challenged before the Sessions Court in Cr. Revision No. 78 of 2013. The Revisional Court set aside the order of the learned Magistrate on 28.03.2014. The order of the Revisional Court is under challenge in their application under Section 482 Cr.P.C.

4. While setting aside the order of the learned Magistrate, the Revisional Court in para 9 and 10 of the judgment observed as follows:-

“9. The learned Magistrate is not required to take into consideration any other circumstance which has not come in evidence during inquiry. From the impugned order, it appears that the learned Magistrate has not mentioned anything about the S.A. of the complainant as well as statement of the witnesses recorded during inquiry, rather the learned Magistrate



has mentioned in the impugned order that it transpires that complainant's wife does not want to live with her husband and his wife has left her in-laws house and started living with her parents. She has also filed case u/s 498A of I.P.C. and 3/4 of D.P. Act against her husband and in-laws, and this case has been filed in order to given undue pressure by the complainant.

10. This Court finds that such observation made by the learned Magistrate, in the impugned order, is not based on any evidence recorded during inquiry, rather these are the observation in defence of the accused persons, which is not permissible in law, at the stage of inquiry. The learned Magistrate is only required to appreciate the statement of the witnesses including S.A. of the complainant recorded during inquiry u/s 202 Cr.P.C., to find out whether prima facie case is made out against the accused persons. The learned Magistrate is not required to consider any defence version of the accused at the stage of inquiry. Accordingly, this Court finds that the learned Magistrate has committed illegality in passing the impugned order dated 03.04.2013 passed in Complaint Case No. C-I/387/12. Therefore, the impugned order dated 03.04.2013, is hereby set aside. The learned Magistrate is directed to hold further inquiry and pass fresh order in accordance with law after taking into consideration the S.A. of the complainant as well as statement of the witnesses recording during inquiry.”



5. Learned counsel for the petitioners does not dispute that the finding of the Revisional Court does not suffer from error of record. The learned Magistrate has to pass the summoning order on the basis of material on the record and it cannot travel beyond the material on the record, especially, without discussing and considering the material on the record. The Revisional Court has referred to the statement of the complainant on oath and statement of the inquiry witnesses who supported the allegation disclosed in the complaint petition.

6. Learned counsel for the petitioners further submits that the present case was lodged to wreak vengeance as wife of the complainant, namely, Tarannum Fatima had already filed Bajpatti P.S. Case No. 04 of 2012 for offences under Section 498A of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act against the husband and other in-laws. Just to pressurize the present case, the police case was lodged by opposite party no. 2 which was found untrue after investigation of the case.

7. The probable defence of motive of false implication can be looked into at the appropriate stage of the trial only. Moreover, the order of the Revisional Court cannot be faulted in any way, hence, there is no question of failure of justice if the order of the Revisional Court is sustained.



8. In that view of the matter, I do not find any merit in this application. Accordingly, it stands dismissed.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
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