

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1056 of 2016

Arising Out of PS. Case No.-217 Year-2016 Thana- SIRDALA District- Nawada

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Anita Kumari wife of Akhilesh Kumar resident of Village- Surjudih, P.S.-
Sirdala, District- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, Nawada.
4. The Deputy Superintendent of Police, Rajauli, Nawada.
5. The SHO Sirdala, Nwada.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Prasad
For the Respondent/s	:	Mr.Ga4-Partha Sarthi

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 15-03-2019

This writ petition has been filed by the petitioner for quashing criminal proceedings against him bearing Sirdala P.S. Case No. 217 of 2016 registered under Sections 420, 506, 406, 467, 471 and 473 of the Indian Penal Code.

2. The contention of the petitioner is that even if the entire allegations made in the FIR are believed to be true, no case as against him is made out.

3. Per contra, learned counsel appearing for the State submitted that there is allegation in the FIR that the co-accused Akhilesh Kumar Yadav @ Akhilesh Kumar had taken money from the informant in presence of the petitioner.



4. I have heard learned counsel for the parties and perused the record.

5. Initially, one Vinay Kumar filed a complaint in the court of Chief Judicial Magistrate, Nawada under Sections 190 and 200 of the Code of Criminal Procedure (for short 'Cr.P.C') vide Complaint Case No. 1005 of 2015. The said complaint was sent to the police at the request of the complainant under Section 156(3) of the Code of Criminal Procedure for investigation whereafter Sirdala P.S. Case No. 217 of 2016 dated 02.09.2016 was registered against the petitioner and her husband Akhileshwar Kumar Yadav @ Akhileshwar Kumar and investigation was taken up.

6. In her complaint, the complainant has stated that the mother of the accused Akhileshwar Kumar Yadav was suffering from *Cancer*. In her treatment, said Akhileshwar Kumar Yadav had spent substantial amount. He took Rs. 5 Lakhs from the complainant with an assurance that he would execute sale deed of some land in his favour. The amount was received by him on 04.07.2010 at 12:00 noon in presence of his wife. Thereafter, he went outside in order to get his mother treated. Since he had assured that when he would come back, he would execute the sale deed, after few months, when his mother died due to cancer, he came back and he asked him to execute the sale deed. However,



the accused Akhileshwar Kumar Yadav refused to execute sale deed. He stated that he would arrange for a job for him in the Railway. He took his matriculation certificate, which was also not returned by him. He sent him for training to Bardhwan (Kolkata) in the 2013 for 90 days. He also sent a forged letter of posting through mail. Thereafter, he again made a demand for his money or else to execute sale deed as promised earlier, but he refused to pay any heed to the request made by the complainant. Subsequently, he gave a cheque of Rs.3,50,000/- to the complainant on 12.04.2014, but when it was presented in his account, the same got dishonoured.

8. On the basis of the aforesaid allegations, the complainant alleged that the accused persons have cheated him.

9. As stated above, a prayer was made in the complaint itself that the complaint be sent to the police for investigation under Section 156(3) of the Cr.P.C pursuant to which the learned Chief Judicial Magistrate referred the complaint to the police for investigation.

10. Having gone through the allegations made in the FIR, I find that the complainant has himself stated that the mother of the co-accused Akhileshwar Kumar Yadav was suffering from *Cancer* and in her treatment, he had spent lot of money. He had taken loan



from him and had assured that he would execute sale deed in favour of the complainant and when his mother died, he refused to execute the sale deed but assured him that he would arrange for a job for him in Railway. It is also alleged that he sent a forged letter of posting and thereafter issued a cheque in favour of the complainant, which also got dishonoured on its presentation. All these allegations are against the co-accused Akhileshwar Kumar Yadav, who happens to be the husband of the petitioner.

11. As far as the petitioner is concerned, save and except one line stated in the complaint that when the complainant had paid Rs. 5 lakhs to the accused Akhileshwar Kumar Yadav, she was also present, there is no allegation against her. She is not alleged to have either demanded or received any amount from the complainant or promised to return the amount taken by her husband or to execute the sale deed in favour of the complainant. The presence of the petitioner in her own matrimonial home, when the complainant allegedly made payment to her husband, would not attract the ingredients of any offence.

12. In absence of ingredients of any offence against her, either institution of the FIR or investigation against her is patently bad in law.



13. Accordingly, the writ petition is allowed. The FIR of Sirdala P.S. Case No. 217 of 2016 and the entire consequential investigation conducted by the police in the said case, as against the petitioner, is hereby quashed. However, the trial court may proceed in accordance with law against the husband of the petitioner.

(Ashwani Kumar Singh, J)

pradeep/sneha

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23-03-2019
Transmission Date	23-03-2019

