

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78137 of 2019

Arising Out of PS. Case No.-380 Year-2018 Thana- PATLIPUTRA District- Patna

Akshay Singh @ Akshay Kumar Son of R.N. Singh Resident of 6/B-19, Tilak Marg, P.S.- S.K. Puri, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Chanda Kumari D/O - Chandra Shekhar Singh Resident of Flat No. 104, Hari Apartment, Near H.P. Petrol Pump, Patliputra, P.S.- Patliputra, District- Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Sr. Advocate Mr. Nirbhay Kumar Singh, Advocate Mr. Pratyush Pratap Singh, Advocate
For the Opposite Party/s	:	Dr. Ajeet Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 29-01-2020

This application has been filed by the petitioner for quashing the FIR of Patliputra P.S. Case no. 380 of 2018 registered for offence under sections 376, 420 and 506 of the Indian Penal Code.

As per the prosecution case narrated in the FIR being Patliputra P.S. Case no. 380 of 2018 registered on 29.08.2018 for the offence under sections 376, 420 and 506 of the Indian Penal Code, the informant states that she came in contact with the petitioner on facebook and became friends. About two years back they married in a temple. She states that he is married from before and hiding this fact, the petitioner married the informant.



It is stated that the informant was a widow and a mother of one child. The informant further states that the petitioner assured her of his love and that he would remain with her for her entire life. Accepting the assurance, the informant entered into marriage with the petitioner. It is further stated that about a year after marriage, the petitioner's wife Rami Mishra started to abuse the informant on phone. She came to the informant's house and abused her in filthy language. It was then that the informant came to know that her husband was married from before. It is further stated that on confronting her husband about his first marriage, he misbehaved with her and also beat up her. Thereafter, he started to torture the informant and about 7-8 months back cajoled her into parting with Rs. 13 lacs for purchase of a vehicle. The informant states that now neither the petitioner was giving her the vehicle nor returning the amount. It is further stated that the petitioner tortured her physically and economically and continued to forcibly establish physical relationship with her. On 22.08.2018, the informant states that he abused her on the facebook and has threatened to kill her. It is finally stated that under the influence of intoxicants, he abused and threatened her and as such she was compelled to lodge the FIR.



The FIR lodged by the informant on 29.08.2018 was registered as Patliputra P.S. Case no. 380 of 2018 on 29.08.2018 for the offence under sections 376, 420 and 506 of the Indian Penal Code.

Heard learned senior counsel appearing for the appellant and learned APP for the State.

It is the submission of learned senior counsel for the petitioner that from reading of the FIR itself it would transpire that no offence whatsoever is made out against the petitioner and thus it is a case of malicious prosecution. It is submitted that from the contents of the FIR it would transpire that sex between the informant and the petitioner was consensual and both being adults, no offence under section 376 of the Indian Penal Code was made out against the petitioner. It was further submitted that so far as the allegations/case under section 420 of the Indian Penal Code is concerned, the story as narrated by the informant in the FIR is an absurd story lacking in details and the basic facts which were required to be given for constituting an offence were absent. It was further submitted that the ingredients to make out an offence under section 420 of the Indian Penal Code were not present and the allegation was not that the amount of Rs. 13 lacs had been transferred in the petitioner's name. It was



further submitted that the allegations of threat etc., were false, concocted and unsubstantiated. The entire prosecution case was speculative and based on conjectures and surmises. It was finally submitted that no offence being made out from the contents of the FIR, the same be quashed.

It was submitted by learned Additional Public Prosecutor appearing for the State that from reading of the FIR itself a clear cut case for offence under sections 376, 420 and 506 of the Indian Penal Code was made out against the petitioner. It was further submitted that the arguments being forwarded on behalf of the petitioner were at best the petitioner's defence and this is not the stage where the same could be considered by this Court. It was finally submitted that from perusal of the FIR, there was no ground for quashing the same and as such the application lacking in merit, the same be dismissed.

At this stage it would be relevant to refer to some of the judgments of the Apex Court on the point in issue. In the case of Pratibha Rani v. Suraj Kumar and another reported in (1985) 2 SCC 370 the Apex Court held as follows :

“54.....In this connection, the Court in *Avtar Singh & Anr. v. Kirpal Kaur* (Criminal Misc. No.2144-M of 1979 and Criminal Misc. No.2145 of 1979, decided on August 16,1979) made the following observations:

"In my opinion, where certain thing is lying in trust with a person, offence of dishonest misappropriation would be committed on a date the demand for return of the entrusted articles is made and the same is



declined.....According to the complaint, the first demand for the return of the articles was made on January 27, 1976 and it was that date when the demand was declined. Hence, the offence of misappropriation of the dowry articles lying in trust was committed on January 27, 1976."

"56. This Court has pointed out more than once that the High Court should very sparingly exercise its discretion under Section 482 CrPC. In *L.V Jadhav v. Shankarrao Abasaheb Pawar* (to which two of us were a party), this Court made the following observations : (SCC p. 240, para 10)

"The High Court, we cannot refrain from observing, might well have refused to invoke its inherent powers at the very threshold in order to quash the proceedings, for these powers are meant to be exercised sparingly and with circumspection when there is reason to believe that the process of law is being misused to harass a citizen."

"59.....It is well settled by a long course of this Court that for the purpose of exercising its power under Section 482 Cr.P.C. to quash a FIR or a complaint the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has no jurisdiction to examine the correctness or otherwise of the allegations....."

The Hon'ble Apex Court further in the case of State of Haryana and others vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335 has held as follows :-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their



face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

“103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

In view of the pronouncements, coming to the facts of the instant case it would be evident that as per the case of the



informant in the FIR, the petitioner had hidden the fact that he was married from before and had established physical relationship with her. Subsequently, on discovery of the fact by the informant that the petitioner is already married, it is stated that he used to beat her up and had intercourse with her against her will and without her consent. Thus, from reading of the FIR an offence punishable under section 376 of the Indian Penal Code is made out against the petitioner. It is further stated in the FIR that the petitioner took away Rs. 13 lacs from the informant for the purpose of purchasing of a vehicle and now he is neither giving the said vehicle nor is he returning the amount. It has further been stated in the FIR that the petitioner on 22.08.2018 had abused her and her son in filthy language on the Facebook. Thus, in the opinion of the Court, from perusal of the FIR, an offence punishable under section 506 of the Indian Penal Code is also made out against the petitioner. Further the case of the petitioner does not fall under any of the seven categories as laid down by the Apex Court by way of instances, in paragraph no. 102 of the judgment in the case of Bhajan Lal (Supra).

Having heard learned counsel for the parties and on going through the records of the case including the FIR in question together with the judgments referred to above, the Court is of



the opinion that prima facie cases under sections 376, 420 and 506 of the Indian Penal Code besides other sections, also are made out against the petitioner and the petitioner has not made out any case for quashing of the FIR in the facts and circumstances of the case.

Thus, there being no merit in this application, the same is dismissed.

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	
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