

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32249 of 2014

Arising Out of Complaint Case No.-25229 Year-2014 Thana- PATNA District- Patna

Amna Naim Wife of Abrar Ahmad resident of Mohalla - Sabjibagh Darzitola,
P.S. - Pirbahore and District - Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Mohammad Akbar Ali Son of Late Abdul Razzak resident of Mohalla -
Public Health Institute, Ashok Rajpath, P.S. - Pirbahore, and District - Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mohammed Abu Haidar
For the Opposite Party/s : Mr.Shahin Begumapp

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 21-07-2022

Heard learned counsel for the petitioner, learned
counsel for opposite party no. 2 and learned APP for the State.

2. This criminal miscellaneous application has been
filed for quashing the order dated 29.05.2014 passed by Judicial
Magistrate 1st Class, Patna in Complaint Case No. 25229
(C)/2014 whereby and where under the learned Magistrate has
taken cognizance of the offences punishable under Sections
420, 406, 504 and 323 of the Indian Penal Code against the
petitioner.

3. The case of the complainant-opposite party no. 2, in
brief, is that in the year 2012, the petitioner/accused came to the
complainant and his wife and told them that she is working in

State Bank of India as 'Dalal' and she could help them to get loan of Rs. Five lakh for the purpose of starting a small scale industry from bank and for this work she demanded Rs. 1.25 lac at once. After agreeing, the complainant paid Rs. 1.25 lakh to the petitioner/accused for the purpose of getting the loan.

4. Further case of the complainant/ opposite party no. 2 is that when loan was not sanctioned to them, complainant went to the residence of the petitioner and asked her to return his money amounting to Rs. 1.25 lakh. The petitioner agreed to return the said money in the year 2013. Thereafter, the opposite party no. 2 again went to the petitioner's residence with witnesses of this complaint on 03.01.2014 and asked her to pay his money. The petitioner flatly refused to pay the money and also threatened to chop off his head if he raises hulla. Upon this, the complainant became furious and the petitioner showed deadly weapon to the complainant and began to assault him by iron rod, as a result of which complainant sustained head injury and he fell down. The persons, who were present there, intervened and saved the complainant. Thereafter, the complainant went to Pirbahore Police Station to lodge FIR but the police refused to lodge FIR and suggested to file complaint case before the court.

5. The complainant adduced evidences of three witnesses in support of the complaint case. After perusal of the evidence adduced on behalf of witnesses, court below found prima facie case to be made out against the petitioner under Sections 420, 406, 504 and 323 of the IPC.

6. Learned counsel for the petitioner has submitted that cognizance has been taken without cogent and reliable evidence. The present complaint is based on absolutely false and concocted story as she has not taken any money from the complainant on the promise of providing loan from the State Bank of India. It is also submitted that at the time of filing complaint no documentary evidence has been brought on record with respect to payment of any amount on the pretext of grant of loan. Such as oral assertion regarding payment is not admissible in law. It is further submitted that petitioner is not a authorised employee of State Bank of India and she has no authority to provide loan to any one

7. It is further submitted that allegation of assault to the complainant is also false and concocted because of the fact that petitioner is an orthopedically handicapped lady. She has been granted disability certificate. She is also receiving monthly handicapped inability pension of Rs. 300/-. This fact has

already been brought on record by annexing Annexure-2 series to this petition.

8. It is further submitted on behalf of the petitioner that prior to filing of the said complaint petition, the opposite party no. 2 had also sent legal notice to the petitioner asking her to return the said amount before 15.01.2014, which is annexed as Annexure-3 to this petition. The said notice itself contains no detailed description about the occurrence, which happened with the complainant on 03.01.2014 and also it does not contain the allegation of assaulting to the complainant by the petitioner. There is also no document in support of injury which is alleged to have been sustained by the complainant.

9. Learned counsel for opposite party no. 2 submitted that the occurrence took place at the residence of the petitioner and hence the court below rightly took cognizance. The witnesses who were present at the time and place of occurrence, fully supported the complaint case and after careful scrutiny of the evidence of the complainant as well as witnesses, the court below took cognizance by applying his judicial mind.

10. Having considered the facts and circumstances of the case and submissions made on behalf of the learned counsel for the parties, the Court finds that a case of interference has

been made out.

11. It is trite law that quashing of a criminal proceeding is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to this Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offences are not disclosed, there would be justification for this Court to interfere.

12. Learned counsel for the petitioner relied upon a decision of this Court in the case of ***Prahlad Rai & Anr. Vs. The State of Bihar & Anr.*** reported in **2019 (3) PLJR 1259** wherein it is observed that :

“8. As has rightly been submitted by learned counsel for the petitioners, the opposity party no. 2 himself accepts that he had paid bribe to the petitioners. Thus, for the grievance that the same has not been returned and he has also not been compensated, filing a

criminal case cannot be permitted in law. The opposite party no. 2 himself is guilty of giving bribe for seeking public employment, which cannot be purchased and the same itself being illegal, it is the opposite party no. 2, who deserves to be prosecuted as he has admitted to paying bribe for getting such employment. Moreover, reliance has rightly been placed by learned counsel for the petitioners on the judgment in Tarkeshwar Prasad Choudhary (supra) with regard to no mercy being shown to the persons who gets into an illegal agreement and pays bribe for getting job. Further, a co-ordinate Bench in the case of Vijay Sharma Vs. State of Bihar reported as 2011(1)PLJR 780, at paragraph no. 11, has held as under:

“11. Section 23 of the Indian Contract Act declares void a contract which is contrary to the law or opposed to public policy. Therefore, even under the civil law the agreement between the parties was unlawful in its very inception. Both had agreed to do something which was prohibited in law. The contract ex facie being unlawful, both parties can be said to have intended to exploit the law for an illegal purpose. The reliance by the complainant on Section 65 of the Indian

Contract Act may create a civil cause of action as a money claim. This is a mere observation and not an affirmative finding for the maintainability of any such claim under an illegal contract which shall have to be decided on its own merits in an appropriate civil proceeding. It can however never constitute a criminal offence.”

13. There is no documentary evidence in respect of giving the alleged bribe of Rs. 1.25 lakh by the complainant to the petitioner. There is no prescription in respect of sustaining the injury by the complainant. The legal notice given to the petitioner for demanding the said money also does not contain allegation of assault and sustaining injury by the complainant.

14. From consideration of the merit of this petition, filed on behalf of the petitioner and the facts of the present case and perusal of the cognizance order, I am of this view that this complaint filed by the O.P. no. 2 is not admissible in the eye of law because accepting and giving bribe for the purpose of getting loan is forbidden , illegal and not permissible.

15. In view of the above facts, the Court finds that the present case against the petitioner has been filed for oblique reasons, to harass the petitioner and, thus, continuance of this proceeding is an abuse of the process of the Law.

16. Accordingly, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 25229(c) of 2014, including the order dated 29.05.2014 by which cognizance has been taken, stands quashed.

(Sunil Kumar Panwar, J)

sushma/-

AFR/NAFR	NAFR
CAV DATE	---
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