
(2010) 09 PAT CK 0120

In the Patna High Court

Case No : Criminal Miscellaneous No. 31899 of 2005

Bijay Kumar Ambastha @ Chunnu Sahay

APPELLANT

Vs

The State of Bihar and Anju Devi

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, 384, 452

Citation : (2010) 09 PAT CK 0120

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Akhilesh Chandra, J.—Heard learned Counsel for the petitioner and learned Additional Public Prosecutor for the State.

2. None appeared on behalf of the complainant opposite party No. 2 inspite of earlier appearance in this case and filing counter affidavits.

3. This is an application u/s 482 of the Criminal Procedure Code seeking quashing of the order dated 06.12.2004 passed in complaint case No. 2271(C) of 2004/Tr. No. 1885/2004 pending in the court of Shri N.B. Lal, Judicial Magistrate, Patna, taking cognizance for the offence u/s 384, 452 and 323 of the Indian Penal Code.

4. The relevant facts of the case is that opposite party No. 2 lodged the complaint against petitioner and two other unknown alleging that on 16.09.2004 at about 8.30 A.M. while she was in her house, accused persons arrived there in search of her husband with abusive language, on protest, the petitioner assaulted her causing injury on nose, lips and back. Further at pistol point, got key of the almirah, from where took out of Rs. 5000/- left the place with threatening. The reason behind as alleged is that just two days before the petitioner demanded a sum of Rs. 20,000/- from the complainant who is under

treatment of a private doctor after assault.

5. Before the court below apart from S.A. of complainant a few more witnesses were produced on consideration of such materials court took cognizance giving rise to instant case.

6. It is submitted on behalf of petitioner that as a matter of fact petitioner and husband of the complainant both were friends since childhood and petitioner in the year 2000 advanced a sum of Rs. 70,000/- to the complainant and her husband when they were in dire need of the amount for their business but the money could not be returned inspite of repeated requests and assurances ultimately in the year 2005 petitioner had to file Criminal case against them perhaps just in order to grab the amount, with false allegation present complaint has been filed well in advance.

7. The husband of the petitioner is in habit of taking money from different persons but avoid repayment to support such contention. copies of few cases lodged against him has also been filed.

8. Learned Additional Public Prosecutor while supporting the order submitted that the averments of the complaint petition are clear to indicate commission of offences for which court below has taken cognizance. On going through the materials available on record whatever the defence is taken on behalf of the petitioner may be considered at appropriate stage of the trial but for the present impugned order needs no interference.

9. The plain reading of the complaint petition and examination of complainant on S.A. supports submissions made above by learned Additional Public Prosecutor, deposition of other witnesses examined during inquiry, filed along with supplementary affidavit also inverbatim prima facie supports case of the complainant. So, only non-production of medical report of alleged injury caused to the complainant as said at the hands of petitioner cannot be a ground for interference in the impugned order at this initial stage when the court below has after examining the averments made in the complaint and materials produced during inquiry passed a reasonable order, taking cognizance.

10. In view of the above, finding no merit, this application is hereby dismissed without affecting right of the petitioner to agitate all his points before the trial court at appropriate stage, where it shall be considered on their own merit.