
(2017) 02 PAT CK 0074

In the Patna High Court

Case No : Criminal Miscellaneous No. 33387 of 2013, Arising Out of PS.Case No.-30 Year-2013 Thana-Madhubani Complaint Case District-Madhubani

Sami Akhtar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), Section 482

Citation : (2017) 2 ECRC 258 : (2017) 1 PCCR 480 : (2017) 1 PLJR 914

Hon'ble Judges : Mr. Vinod Kumar Sinha, J.

Bench : Single Bench

Advocate : Mr. Ajay Kumar Thakur with Ms. Babiti Kumari, Advocates, for the Petitioners; Mr. Shailendra Kumar No.1, APP, for the Opposite Party

Final Decision : Dismissed

Judgement

Mr. Vinod Kumar Sinha, J. (CAV) - Heard learned counsel for the petitioners.

2. The petitioners have preferred this application under Section 482 of the Code of Criminal Procedure for quashing the order dated 25.4.2013 passed by learned Chief Judicial Magistrate, Madhubani in Complaint Petition No.456 of 2013, by which it transmitted the complaint to Mahila Police to lodge the case under Section 156(3) of the Code of Criminal Procedure as well as for quashing the Madhubani Mahila P.S. Case No. 30 of 2013 dated 6.5.2013.

3. The prosecution case, in short, is that one Jitan Parveen, Opposite Party No.2, filed a complaint petition before the Chief Judicial Magistrate, Madhubani stating, inter alia, therein that the elder sister of the complainant was married with elder brother of accused No.1, namely, Md. Kamal Akhtar in the year 2011 and after marriage her sister went to her sasural and residing there. Her further case is that she being sister-in-law of accused No.1 used to go to her sister's sasural and accordingly accused No.1 fell in love with the complainant and showed his willingness to marry the complainant. However, father and mother of the

opposite party No.2 did not agree and they went to the parents of accused No.1 for acceptance of their proposal and on the intervention of elder brother of accused No.1, her parents agreed to the same. However, elder brother of accused No.1 has put a condition that they have to bear educational expenditure of accused No.1, for which they agreed. It is also her case that thereafter marriage was solemnized and accused No.1 came back to his house. It is also alleged that thereafter accused No.1 along with his family members filed complaint petition being Complaint Case No. 984/12 before Chief Judicial Magistrate, Madhubani against the complainant and her family members with an intention to extort money from them, which was later on sent to the police for institution and investigation under Section 156(3) Cr.P.C. It is further alleged that thereafter the accused persons conspired and extorted huge amount from her parents which was deposited in the account of accused No.1.

4. Further case is that thereafter police after investigation submitted final form as the case not true against the parents and brother of opposite party No.2. However, cognizance was taken and the case was transferred to the court of SDJM, Madhubani.

5. Further case of opposite party No.2 is that on the pressure of accused persons, elder sister of opposite party No.2 had also lodged a false case against her parents and other family members which was numbered as CR 1851/12 which is pending for enquiry before that court and all these facts create a mental torture to her. Later on petitioner No.2 Motiur Rahman, father of her husband, had also lodged a case against her family members which was numbered as CR 1673/12 and one after another the cases were filed and in the CR No. 984/12 learned SDJM had issued bailable warrant of arrest against the family members of opposite party No.2. All the aforesaid actions put up family members in great difficulty and one brother of opposite party No.2 had to face the jail custody also. It is also her case that on 19.4.2013 father and uncle of opposite party No.2 were called by the family members of petitioners and in spite of that, they were not ready to settle the matter, rather they abused and threatened them and demanded Rs.15 lacs and after abusing, drove them out of the house and snatched Rs.7500/- from the pocket of father of the complainant.

6. The aforesaid complaint was sent to the police for institution and investigation vide order dated 25.4.2013 passed by learned Chief Judicial Magistrate, Madhubani, on the basis of which Madhubani Mahila P.S. Case No. 30/13 dated 6.5.2013 was registered against the petitioners.

7. Now the petitioners have filed the present application for quashing the entire criminal proceeding as well as FIR of Madhubani Mahila P.S. Case No. 30/13 on the ground that the order of learned Chief Judicial Magistrate under Section 156(3) Cr.P.C. for sending case to the police for institution and investigation is against the settled principles of the Criminal Justice System as firstly there was no prayer of the complainant for sending the case to the police, secondly on the ground of non-compliance of the provisions contained in sub-section (3) of

Section 154 Cr.P.C. and thirdly on the ground that as a large number of cases are going on between the parties which is evident from the complaint petition itself, this is clearly a malicious and mala fide proceeding and, as such, instead of sending it before the police the learned court ought to have examined the same cautiously and would not have sent it to the police in mechanical manner.

8. On the basis of above submission, learned counsel for the petitioners has prayed for quashing of the order dated 25.4.2013, passed by learned Chief Judicial Magistrate, Madhubani, in Complaint Petition No. 456 of 2013.

9. In support of his contention, learned counsel for the petitioners has cited decisions in the case of Priyanka Srivastava v. State of U.P., reported in (2015) 6 SCC 287 and a decision of this Court in the case of Bipin Kumar Singh & another v. The State of Bihar & others, reported in 2016 (1) PLJR 923.

10. It is also submitted by learned counsel for the petitioners that earlier also, opposite party No.2 had filed complaint petition No. 384 of 2012 against the petitioners and others under Sections 147, 498A, 420, 504/34 IPC as well as under Sections 3 and 4 of the Dowry Prohibition Act with same accusation, as such, this complaint petition itself is not maintainable.

11. Heard learned APP also.

12. Learned APP has submitted that in this case FIR has already been lodged and if there is any grievance of the petitioners they may bring the documents before the police during the investigation for just investigation of the case and without waiting for investigation, challenging the whole proceeding as well as lodging of the FIR, is not permissible in the eye of law as the power of investigation is exclusively reserved for police and that power is unfettered and it is also well settled in the several decisions of the Supreme Court and of this Court that courts should generally refrain from quashing the FIR in its jurisdiction under Section 482 Cr.P.C. unless some glaring default or jurisdictional error is there and it is also submitted that if the petitioner will have any grievance he may raise this after submission of the charge-sheet, as such, this is not proper stage for raising the grievance. Hence, learned APP has prayed for dismissal of this application.

13. As the matter is old one of the year 2013 and parties had appeared, this application is being disposed of at the admission stage itself.

14. Heard learned counsel for both sides.

15. In the present case the petitioners have challenged the order by which learned Chief Judicial Magistrate has transmitted the complaint petition for institution of a case and for investigation. This application has been filed on 5.8.2013 and vide order dated 14.3.2014, it was directed not to take any coercive steps against the petitioners. As all the parties had appeared, I think it proper to dispose of this petition at the stage of admission itself.

16. From the complaint petitioner itself it appears that now police case has already been lodged. However, it has been argued by learned counsel for the petitioners that there is no prayer of opposite party No.2 in this case for sending the complaint petition for institution of a case and also there is submission that there is no compliance of Section 154(3) Cr.P.C. However, on perusal of complaint petition it appears that in the present case there is no prayer of the opposite party No.2 to send it to the police and it is not a petition under Section 156(3) of the Code of Criminal Procedure, rather a complaint petition was filed by the opposite party No.2 and learned C.J.M. has sent the case for institution and investigation of the case. From perusal of the complaint petition, it clearly appears that a cognisable offence is made out, as such the action of the Chief Judicial Magistrate, sending the case for institution and investigation of the case, is not against the provisions contained in Section 154(3) of the Code of Criminal Procedure. Hence the decisions cited by learned counsel for the petitioners mentioned above are not applicable in the facts and circumstances of the present case.

17. However, without going into the merits of the allegation made in the case as the police case was instituted under Section 156(3) of the Code of Criminal Procedure., I find no error apparent in the order dated 25.4.2013 passed by the Chief Judicial Magistrate, Madhubani as even if the investigation is allowed to continue, it will not prejudice the petitioners as they will also get a chance to bring the documents before the police and they have a chance to present their case during course of investigation.

18. In the light of the discussions made above, I find no merit in this application. It is, accordingly, dismissed.