
(2017) 02 PAT CK 0091

In the Patna High Court

Case No : Criminal Miscellaneous No.48585 of 2013

Shivlal Mehta @ Shivlal Mahto

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 13-02-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2017) 2 BLJud 149 : (2017) 2 PCCR 59

Hon'ble Judges : Birendra Kumar, J.

Bench : Single Bench

Final Decision : Allowed

Judgement

Birendra Kumar, J. (Oral)—This application is for quashment of the order dated 24.9.2013 passed in Complaint Case No. C-1028 of 2012, Tr. No. 2163 of 2013 by the learned Judicial Magistrate, 1st Class, Aurangabad whereby the petitioner has been summoned to face trial for offences under Sections 323, 354, 504 and 506 of the Indian Penal Code.

2. The opposite party no.2 is the complainant of this case. The petitioner is an advocate by profession.

3. Allegation is that the petitioner had demanded ransom from the complainant and on non-payment, he had threatened to kill her. Thereafter, the complainant lodged an F.I.R. vide Aurangabad (Town) P.S. Case No. 337 of 2012 against the petitioner and she had gone to District Bar Association, Aurangabad to make a complaint against the petitioner to the Secretary of the Bar Association. At that time, the Secretary or the President of the Association were not there. However, the petitioner was there and he started assaulting the complainant and during the course of scuffle, the petitioner allegedly had torn her clothes and tried to outrage her modesty. Two witnesses were examined during the course of enquiry out of that one was the son of the complainant and another was the outsider who has supported the allegation as eye witnesses of the occurrence.

4. Submission of the learned counsel for the petitioner is that the allegation is based on complaint case and malafide of the accused can be looked into to see whether the criminal prosecution is an abuse of the process of the court or not. The petitioner is an advocate of the husband of the complainant in Partition Suit No. 153 of 2010 brought by Shashikant Prabhakar son of the complainant. The aforesaid fact would be evident from Annexure-2. The petitioner is also an advocate of the husband of the complainant in Maintenance Case No. 63 of 2010, pending in the court of learned Principal Judge, Family Court, Aurangabad. The petitioner had filed an informatory petition No. 125 of 2012, vide Annexure-4, on 9.7.2012, prior to the present complaint case, against the complainant disclosing therein that since the petitioner is an advocate on behalf of the husband of the complainant, the same is not liked by the complainant and she had threatened to falsely implicate him in false case. Thereafter, the present complaint petition was filed on 12.10.2012.

5. The learned counsel for the complainant submits that at the stage of issuance of summons, the court is only required to see as to whether prima facie case is made out or not and if a prima facie case is made out, the issuance of process could not be interfered with. In the present case, the complainant witnesses have supported the allegation. Hence, the impugned order requires no interference.

6. While exercising the jurisdiction under Section 482 Cr. P.C., this Court is competent to look into the malafide of the complainant. The narration of the entire facts, aforesaid, apparently reveals that the petitioner, who is a practicing advocate, was engaged by the husband of the complainant, in the cases brought by the complainant or her son. In the circumstances, such allegation that the petitioner committed, the alleged offence against a client is highly improbable and unbelievable. If such type of prosecution is allowed to stand, there would be scope to harass the professionals in different ways. The petitioner has no criminal antecedent. Hence, to prevent the abuse of the process of the court the impugned order is set aside and this application stands allowed.