
(2010) 08 PAT CK 0069
In the Patna High Court
Case No : Cr. Misc. No. 29167 of 2000

Smt. Tasneem Rahman and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Citation : (2010) 08 PAT CK 0069

Judgement

Dharnidhar Jha, J.—Heard learned Counsel for the parties.

2. The petition seeks quashing of prosecution initiated on complaint petition bearing No. 36 of 2000 in which order of summoning was passed on 27.5.2000. The Petitioners were summoned as the S.D.J.M., Patna City, was of the view that there was sufficient ground for proceeding against the Petitioners for committing offences under Sections 323, 380, 504 and 506 of the Penal Code.

3. Petitioner No. 1 Smt. Tasneem Rahman is the wife of the complainant, Dr. Syed Eqbal Afzal. Petitioner No. 2 is the father of Petitioner No. 1. Petitioner No. 3 is her brother and Petitioner No. 4 is the son-in-law of Petitioner No. 2.

4. It is alleged by the complainant that the Petitioners came to his house and they were properly received and were extended proper courtesies and the complainant went away to oversee the construction work which was being carried out over a land which was earlier purchased by him. While leaving his house, he handed over Rs. 15,000/- to Petitioner No. 1, his wife, from the Almirah for meeting out the charges of labourers employed in the construction work.

5. When he came back at about 4 P.M. on the day of occurrence he found that all the Petitioners were ready after having packed some luggages and Petitioner Zillur Rahman told him that he was taking the wife of the complainant, i.e., his daughter to Delhi and the Petitioners would live there permanently. The complainant stated that he pointed out to Petitioner Nos. 2 and 4 that they should not interfere with the personal life of the complainant and Petitioner No. 1 and pointed out that the two children were reading in one of the most prestigious

institutions of Patna and removing them from Patna would jeopardize their future but they did not hear the complainant and became furious and started hurling filthy abuses upon him. Besides, on the order of Petitioner Zillur Rahman, Petitioners Zaidur Rahman and Salman assaulted the complainant with fists and slaps and went away with the wife of the complainant and some of his belongings by a three wheeler. It is further alleged that the accused persons had also took out some old family ornaments and clothes belonging to the complainant and the efforts of the Mohalla people to persuade the Petitioners not to take away the wife of the complainant did not have any effect.

6. It was alleged that the reason for commission of the offences was that the Petitioners wanted the complainant to resign his service in Patna, leave his parents alone so as to settling down in Delhi with his wife and children, else, they would get Petitioner No. 1 Smt. Tasneem Rahman married to another man.

7. The complainant stated that he filed the report with Alamganj Police Station but they did not take any action and again on 3.1.2000 Petitioner Zillur Rahman gave a ring to him and threatened the complainant of being implicated in serious criminal cases as a result of which he filed an informatory petition before the A.C.J.M., Patna City on 4.1.2000.

8. Three witnesses were examined by the complainant during the course of inquiry u/s 202 Code of Criminal Procedure and the order was passed.

9. It was urged by learned Senior Counsel, Shri Ashwini Kumar Singh, appearing for the Petitioners by citing before me a decision of this Court reported in Md. Hasnain Vs. The State of Bihar and Another, that the facts alleged did not constitute offences under Sections 504 and 506 of the Penal Code. It was further contended that as regards offence u/s 380 of the Penal Code that also was not constituted as the money was in joint possession of the complainant and Petitioner No. 1 Smt. Tasneem. It was contended that it was improbable that the father and his close relatives, like brother and Bahnoi of Petitioner No. 1, would come to commit the offence in the manner as alleged so as to wreaking the settled marriage, specially of his own daughter. In support of the contention the decision of the Supreme Court reported in Harmanpreet Singh Ahluwalia and Others Vs. State of Punjab and Others, was cited before me.

10. Shri Farooq Ahmad Khan, learned Counsel appearing for O.P. No. 2 has resisted the petition by, submitting that the offences under Sections 323, 380 and 504 of the Penal Code were duly made out.

11. It appears from the perusal of the present petition that the Petitioners and the complainant are litigating with each other. It appears that the complaint petition was filed on 22.1.2000. After filing of the complaint, the wife Petitioner No. 1 also appears filed F.I.R. vide, Amas P.S. Case No. 66 of 2000 on 17.8.2000 alleging being tortured, assaulted and extorted also. In such a situation, the Court is called upon to consider the order of summoning.

12. Petitioner No. 1 Smt. Tasneem was admittedly not residing with the complainant as the parties appear quite at loggerheads. The father Zillur Rahman is alleged to have come to the house of the complainant with the remaining two Petitioners so as to picking up the lady and taking her away with her children. The children were admittedly studying in one of the best schools of Patna and it does not come to reasons that the father of the wife would come simply to sabotage not only the marriage which was as good as having produced three children of different age groups, but also a marriage which was some year old also as the same appears solemnized on 30.4.1990 as per the statement of Petitioner No. 1 Smt. Tasneem in her petition of complaint which is the basis of the F.I.R. in the abovenoted Amas P.S. Case. Besides, it also does not come to reason that the father of the Petitioner Tasneem and her brother as also her Bahnoi will come down from as far a place as New Delhi for committing the offences as have been alleged and that too knowing that their act was bound to have its smashing effect on a marriage which was almost 10 years old. Some such probabilities could be found from the decision of the Supreme Court cited before me reported in Harmanpreet Singh Ahluwalia and Others Vs. State of Punjab and Others, that the father in that case was residing in Canada was alleged to have come somewhere in Punjab for committing the offence for which the F.I.R. of that case was instituted. Upon considering that aspect of the matter it was held that under the above circumstances it appeared that the case had been filed only with an ulterior motive to harass the Appellants before the Supreme Court. This finding appears recorded in paragraph 32 of the above-noted decision of the Supreme Court.

13. In addition to the above, when I consider the constitution of the offence on facts of the case, I find that on the date of occurrence the complainant and Petitioner No. 1 Smt. Tasneem were living in the same house and had almost everything in their joint possession. As such, the allegation that the Petitioners committed theft from the dwelling house, specially Petitioner No. 1 Smt. Tasneem, appears not acceptable and further appears not constituting an offence u/s 380 of the I.P.C. inasmuch as the complainant has not specified the ornaments which were taken away by the accused. As regards the story of handing over Rs. 15,000/- to Smt. Tasneem by the complainant, it is stated that the money was meant to pay up the labour-charges. The complainant stated that he handed over the money when he was leaving to go to the construction-site. If he was himself going to the construction-site, it simply sounds absurd that the wife would pay to the labourers. It's an improbability.

14. The allegation is that the Petitioners hurled abuses upon the complainant. In a case of similar facts a Bench of this Court in Md. Hasnain (supra) gave the following findings in paragraphs 5, 6 and 7 which run as under:

5. Section 504 I.P.C. seeks to punish a person who intentionally insults to provoke breach of peace. Section 504 I.P.C. reads as follows:

504. Intentional insult with intent to provoke breach of peace.--Whoever

intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

6. In the complaint petition it has been said that in course of search of Suresh Tiwary the complainant reached Kotwali Police Station where the Petitioner being Officer Incharge was sitting. He told the complainant that his man is an accused in a theft case. When the complainant challenged the allegation, the Petitioner became angry and used unparliamentary language and asked him to leave the police station otherwise he would be compelled to go away. In the complaint petition the abusive words used by the Petitioner has not been stated. An insult, even a gross insult is not an offence in itself under this section. The section refers to an insult intentionally inflicted and which is likely to result in a breach of peace. In absence of particular words spoken by the Petitioner it is difficult to ascertain whether the use of those words amounted to intentional insult.

7. It is thus necessary that actual words used or supposed to have been used by the Petitioner accused which the complainant understood to be words of insult should be mentioned in the petition of complaint otherwise the Court would not be in a position to decide whether the words used amounted to intentional insult. Mere allegation that the Petitioner used unparliamentary language and thereby abused the complainant, in my considered opinion, would not be sufficient to bring the allegation within purview of Section 504 of the Indian Penal Code.

15. What I want to add up to the above observations of the Hon''ble Judge is that even in a case in which the actual words which could be insulting are also indicated in a given case, the same by itself would not constitute the offence u/s 504 I.P.C. The effect of those words should be a provocation enough to cause the person abused and provoke to cause the breach of the peace. Then only it may constitute an offence u/s 504 I.P.C. The complainant in the present case does not state that he was provoked by whatever abuses hurled upon him by the Petitioners Nos. 2, 3 and 4 and further that it had an effect as if it were to commit the breach of the peace. Thus, there does not appear any of the ingredients of offence u/s 504 I.P.C. constituted by the facts of the case.

16. So far as the constitution of an offence u/s 506 I.P.C. is concerned, what appears from the perusal of that section is that a person must criminally intimidate the other in ways and with consequences, as appearing in that particular provision. Criminal intimidation has been defined by Section 503 I.P.C. and the facts which have been alleged do not appear any of the ingredients of the particular offence, as such, no offence u/s 506 I.P.C. was also made out.

17. On the reasons which I have just pointed out, I find that the order of summoning initiated on the abovenoted complaint petition was not fit to be allowed to proceed and, as such, the whole prosecution is hereby quashed.

18. The petition is allowed.