
(2010) 04 PAT CK 0213
In the Patna High Court

Sujata APPELLANT
Vs
The State of Bihar and Ishwur Singh RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

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

Citation : (2010) 04 PAT CK 0213

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The sole petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of the order dated 15.4.1999 passed by Sri Vijay Kumar, Judicial Magistrate, 2ndClass, Patna in Complaint Case No. 1295(C) of 1998. By the said order, the learned Magistrate had taken cognizance of the offence u/s 323 of the Indian Penal Code and directed for issuance of process for securing the attendance of accused persons including the petitioner.

2. Short fact of the case is that Opp. Party no. 2 had filed complaint vide Complaint Case No. 1295(C) of 1998. In the complaint petition, he disclosed that he had gone to the State Bank of India, Digha Branch, Battaganj, Digha Police Station, Patna along with a cheque, which was signed by his mother for getting the same encashed. It was disclosed that while he presented the cheque before the Clerk of the Bank, he was asked to bring the person, v ho had signed the cheque. The complainant requested the clerk of the Bank that on earlier occasion, while he had come for getting the cheque encashed, which were issued by his hand, no such objection was ever raised, but what is the reason for asking the mother of the complainant to remain present in the Bank. After refusal by the clerk, he approached this petitioner, who was the Branch Manager of the Bank and again he repeated the same request. However, the request was refused

by this petitioner and this petitioner asked him to comply the request made by the clerk of the Bank. It was further disclosed in the complaint petition that the complainant went to his house and he came along with his mother in day time and thereafter he got the cheque encashed and while he was returning, his mother received sun-stroke and she was treated by a private doctor. On these allegations, the complaint petition was filed and subsequently by order dated 15.4.1999 the learned Magistrate has taken cognizance of offence u/s 323 of the Indian Penal Code.

3. Sri Sandeep Kumar, learned Counsel appearing on behalf of the petitioner submits that after perusing the entire complaint petition, it would be difficult to make out any offence. He submits that without any material indicating commission of any offence, the learned Magistrate surprisingly has taken cognizance of offence u/s 323 of the Indian Penal Code. He further submits that petitioner is a lady Branch Manager of the State Bank of India and when the complainant approached her, she simply asked to act upon the advice of the clerk of the Bank. By requesting the complainant to comply with the advice of the clerk, the petitioner had committed no offence. It cannot be said that she had committed any offence but in discharge of his official duty she simply asked to approach the clerk. On the ground of non-application of any offence in the present case, Sri Sandeep Kumar, learned Counsel for the petitioner has prayed for quashing of all the subsequent proceedings in Complaint Case No. 1295C of 1998. Sri Sandeep Kumar, learned Counsel for the petitioner has also submitted that in the complaint petition itself, the complainant has stated that occurrence had taken place on 19.6.1998, whereas the said complaint petition was filed on 10.9.1998 without any plausible explanation.

4. In this case despite issuance of notice, no one has come forward to defend the case of Opp. Party no. 2.

5. I have also examined the complaint petition as well as materials available on the record. On perusal of complaint petition I am of the view that no offence is made out so far this petitioner is concerned.

6. Accordingly, without going into the detail of the case, I hereby set aside the order of cognizance dated 15.4.1999 and all subsequent proceedings so far as it relates to the petitioner.

7. Accordingly, the petition stands allowed.