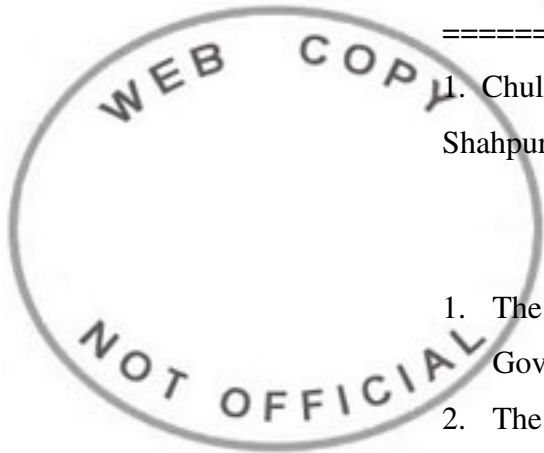


IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.878 of 2014



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1. Chulhan Roy, Son of Shri Baharan Roy, resident of village- Pahleja
Shahpur Diyara, Police Station- Sonapur, District- Saran

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Home
Government of Bihar Patna
2. The Secretary Department of Home, Government of Bihar, Patna
3. The Director General of Police Bihar, Patna
4. The Inspector General of Police Muzaffarpur Division, Muzaffarpur,
Bihar, Patna
5. The Superintendent of Police Saran, Bihar
6. The Officer-In-Charge Sonapur Police Station, Saran
7. Shri Dharam Nath Roy, Son of Vinod Roy, resident of village- Pahleja
Shahpur Diyara, Police Station- Sonapur, District- Saran
8. Sunil Roy, Son of Chulhan Roy, resident of village- Pahleja Shahpur
Diyara, Police Station- Sonapur, District- Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Shri J.P.Shukla Sr. Advocate
Shri. Vivekanand Kumar, Advocate
Shri Duganand Jha, Advocate

For the State of Bihar : Shri Alok Ranjan, A.C. to G.A. 13

For the Informant : Shri Jagdish Prasad, Advocate
Shri Alok Kumar Alok, Advocate

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL ORDER

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

7 23-01-2015

Heard.

2. The petitioner Chulhan Roy, who happens to be the father of Sunil Roy, aged about 27 years, as per the very statement made by this petitioner in his application addressed to the Officer-in-charge, Sonapur Police Station, Saran, dated 4.7.2012, seeks production of his son, the said Sunil Roy from the wrongful and illegal custody of respondent No.7.

3. The relief has been framed on the statements of facts that respondent No.7 took the son of the petitioner named Sunil Roy with him to Mumbai for employing him in his service. The petitioner had conversation also with his son in Mumbai after 4-5 days of his departure from his native place and from that the petitioner came to know that he was residing at Borivali, Sulabh Shauchalay, Gali No. 6 (Near Police Chowki), East-22, Mumbai with respondent No.7. But, sometimes after the petitioner found, on making an attempt to contact his son so as to talking to him, that the Cellular Phone No 08898386977 which number was given to the petitioner by respondent No.7 was always switched off and, as such, he could not talk to his son. The petitioner in order to satisfying his anxiety also visited the house of respondent No.7 to know about the well-being of his son and to have any other contact number, but all attempts of the petitioner went in vain. As such, the petitioner apprehended some foul play at the hands of respondent No.7 and lodged a report with the Police (Ext.1) by filing the same with the Officer-in-charge of Sonapur Police Station.

4. As regards the contents of Annexure-1, besides the above facts, it was also alleged that it was an act of abducting the son of the petitioner and that the son of the petitioner,

probably, had been made to disappear or he had been put on other engagements of unlawful nature.

5. It appears from the statements made in the petition as also in Annexures-2 and 3 that the same allegations were reiterated by the petitioner in another application presented by him before the Superintendent of Police, Saran at Chapra on 15.5.2014 and, undisputedly, the Superintendent of Police, Saran at Chapra appears directing an inquiry as appears from the counter affidavit filed by the State of Bihar on its own behalf as also on behalf of its Officers, i.e. respondents No. 1 to 6.

6. It has been stated, inter alia, by the State of Bihar that on an inquiry which was held by the Officer-in-charge of Sonapur Police Station it was found that it was a voluntary act of the petitioner that he dispatched his mentally retarded son who was 24 years of age, to Mumbai for earning in the metropolis and the man was residing at Sulabh Sauchalay Complex there and that only after four days of his arrival in Mumbai, Sunil Roy went missing. Respondent No.7 who was residing in Mumbai was told about the victim Sunil Roy going missing and, as such, he contacted the petitioner on his own in order to telling him about the incident of missing of his son and requested the petitioner to come to Mumbai and to bring a photograph of Sunil Roy with him. The documents indicated that the petitioner did not go to Mumbai rather he dispatched the photograph of Sunil Roy and the matter was reported by respondent No.7 to the Crime Branch of Mumbai Police, and, accordingly, Thane Police Station, Mumbai registered entry No. 40/12 dated 3.6.2012 as also 33 dated 3.6.2012 and sent the matter to Doordarshan for publication through a hue and cry message so as to tracing out the

whereabouts of missing Sunil Kumar Roy.

In support of the statement made by the State of Bihar and its Officers, it has annexed a photo copy of the report submitted by the Officer-in-charge, Sonapur Police Station to the Superintendent of Police, Saran as Annexure-A, besides annexing the relevant documents in respect of the two entries made by Thane Police in respect of the report which was made to it regarding Sunil Roy having gone missing.

7. The private respondent No.7 also appeared through his counsel and filed his counter affidavit on 20th of January, 2015 and as appears from paragraphs 4,5 and 6, he denied to have taken away the son of the petitioner for employing him either in his personal service or to work at Sulabh Sauchalaya, Borivali, Mumbai. He, in fact, stated that the victim Sunil Roy was a grown up person of 24 years of age and he himself went to Mumbai and joined at Sulabh Sauchalaya, Carter Road No. 5, Borivali (East) Mumbai and was also residing there. It was subsequently that Sunil Roy met respondent No.7 at his house as he was residing at Borivali No.6, Sulabh Sauchalaya, Borivali (East), Mumbai. It was on the 22nd of May, 2012 that respondent No.7 came to know that Sunil Roy had gone missing from his residence when he had gone to a grocery shop, but not to return. Respondent No.7 stated that he attempted his best to locate the victim, but could not find him out and, lastly, he informed Kasturba Marg Police Station, Mumbai on 3.6.2012 and steps were taken by the said Police Station by Annexure-A series. Respondent No.7 also denied to have given any Cellular number or to have talked to the petitioner in connection with taking away his son either by consent of the respondent No.7 or otherwise. On

perusal of the Annexures to the counter affidavit filed by respondent No.7, what we find is that the police after having made entry in its records had also sent messages to Doordarshan Sahyadri Channel for telecasting the information about Sunil Roy going missing on four days of a week i.e. on Monday, Tuesday, Wednesday and Thursday at 21.10 to 22.00 hours serially.

8. The learned Senior counsel for the petitioner valiantly attempted to impress upon us that respondent no.7 had taken away Sunil Roy and it was definitely an act constituting some offence and, as such, the police of Thane, Mumbai or of Sonapur ought to have registered a F.I.R. It was next contended that after having taken the son of the petitioner to Mumbai, respondent No.7 was presumed to have detained Sunil Roy in his wrongful and illegal custody and, as such, a direction should issue to respondent No. 7 for his production before the Court. The learned Senior counsel also submitted that the police records are fabrications in order to denying the relief which was claimed by this petitioner and in the above background at least some compensation be paid to the petitioner for the illegal and wrongful custody of his son. In support of the submission a decision of the Supreme Court in the case of **Mohd. Ikram Hussain Vs. State of Uttar Pradesh** reported in **A.I.R. 1964 SC 1625** was cited by him.

9. Learned counsel for the State of Bihar as also learned counsel for the respondent No.7 have contested the reliefs and have submitted that it was a disputed fact and there is complete denial by the State of Bihar as also by respondent No. 7 that it was an act of taking away Sunil Roy rather it was the voluntary act of Sunil Roy to go to Mumbai and his going missing



cannot be attributed to any individual. The facts which were collected by the Police indicated that no offence was committed by any one and, as such, no F.I.R. was lodged. It was also submitted that the preliminary inquiry held by Sonapur Police reveals that the petitioner himself had dispatched his son, who was mentally retarded, to Mumbai for earning livelihood and, as such, the petitioner cannot seek compensation and other reliefs.

10. We have gone through the contents of the affidavits in the light of the statements of facts and allegations made in the writ petition. We find that the facts which are alleged by the petitioner in the writ petition have seriously been contested with some evidences which have been produced by the State of Bihar and its Officers as part of the counter affidavits filed by them.

11. The police has inherent statutory power and jurisdiction to investigate a crime of cognizable nature. But, that statutory power of police to investigation is not the mandate of law if it finds that no cognizable offence appeared committed by any one known or unknown. A jurisdiction is vested in the police by Section 157(1) Proviso of the Code of Criminal Procedure also that it could hold a preliminary inquiry on some facts alleged showing commission of a cognizable offence and if it finds that no such offence was committed, it may choose not to proceed with the investigation by drawing the F.I.R. up. It is well known to be reiterated that facts indicating commission of cognizable offence only compels the drawing of the F.I.R. and if the police finds that not a cognizable offence was disclosed on facts, then it does not have the statutory duty to draw up a F.I.R.

12. We have before us a full-fledged report



submitted by Sonapur Police as part of the statement made by the State of Bihar and its Officers, i.e. respondents No. 1 to 6 that on receipt of the complaints from the petitioner which were filed, firstly, before the Officer-in-charge, Sonapur Police Station and, thereafter, before the Superintendent of Police, Chapra, an inquiry was conducted and the report in the form of Annexure-A was placed before us with the counter affidavit filed by the State of Bihar and its Officers. We have already noticed the facts narrated in Annexure-A. The Officer-in-charge of Sonapur Police Station, after holding a preliminary inquiry, found that Sunil Roy aged 27 years was a mentally retarded person and that the petitioner Chulhan Roy and respondent No.7 both belonged to economically weaker section of the society and the petitioner himself sent his mentally retarded son to Mumbai for earning his livelihood and while he was in Mumbai, he lost the way and disappeared somewhere. It was found, as has been stated by the private respondent No.7, that when respondent No.7 came to know about the man going missing, he on his own filed a report with Kasturba Marg Police, Mumbai and we have already noticed that that police took steps by making entries about the information in its records and also had transmitted the hue and cry messages to Doordarshan along with the photograph of Sunil Roy for publication. There is a statement made by respondent No.7 that he had requested the petitioner to come to Mumbai after he had learnt about Sunil Roy having gone missing and also to bring a photograph of Sunil Roy with him. But, he did not come and instead dispatched the photograph and that, probably, was sent for publication.

13 Thus, what we find is that the fact that respondent No.7 had taken away Sunil Roy appears not probable.

The probability which appeared indubitably was that it could be a case in which the poverty stricken father might have dispatched his son by virtue of his maturity for earning his livelihood for getting some respite. Thus, the police also did not find it a case for intentionally taking away and enticing away Sunil Roy from his lawful guardianship. Thus, the police did not have any reason to lodge a F.I.R. as no offence, cognizable in nature, was made out.

14. Having dealt the question of respondent No.7 having taken away the son of the petitioner to Mumbai, we may merely say that the facts asserted as regards his involvement do not appear acceptable. We have noticed the preponderance of probability arising out of the report submitted by the Officer-in-charge of Sonapur Police Station and that also tilts the probability that Sunil Roy might have gone to Mumbai voluntarily and the Court cannot find any one responsible in that behalf. Thus, from the facts asserted it was established that Sunil Roy was not under wrongful detention of any person.

15. The very language of Article 226 of the Constitution of India empowers the Court to issue any direction, orders or writs if it finds it necessary to issue in appropriate cases and the same can be issued against any individual also in such appropriate cases. Here, in the present case, there is no semblance of wrongful detention as regards respondent No.7 and, as such, we find that the law laid down in **Md. Ikram Hussain (Supra)** is not applicable to the facts of the present case.

16. The State cannot owe any responsibility in respect of an act of an individual, who could be as responsible as to dispatch his mentally retarded son to Mumbai for getting augmented his financial position. We cannot, as such, give any

direction to the State of Bihar for paying compensation to the petitioner. What we find is that the petition has no merit and the same cannot be allowed.

17. The petition appears meritless and the same is dismissed, but without costs.

(Dharnidhar Jha, J)

(Amaresh Kumar Lal, J)

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