

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40510 of 2012

Arising Out of PS.Case No. -185 Year- 2010 Thana -null District- JEHANABAD

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Dalbeer Singh Moriya, son of Late Sher Singh, Resident of C-3, Ellit Tower, P & B colony, Adarsh Nagar, P.S. SEnari, Dist. JAmsehdpur

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. S.K. Lal
Mr. Pritesh Kumar Lal, Adv.

For the Opposite Party/s :

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

Date: 10-10-2017

Heard the learned counsel for the petitioner and the learned APP for the State.

The instant criminal miscellaneous has been filed for quashing the prosecution of the petitioner in Trial No. 2218 of 2012 arising out of G.O. Case No. 36 of 2010 in Makhdumpur P.S. Case No. 185 of 2010 including the order dated 24.12.2010 / 20.03.2012 hereunder cognizance has been taken against the petitioner for the offences under Sections 182, 211 IPC pending in the court of learned Sub-divisional Judicial Magistrate, Jehanabad.

The petitioner has filed Complaint Case No. 382 of 2010 in the Court of Chief Judicial Magistrate, Jehanabad making allegation that his minor daughter, Dhiraj had gone to Delhi along



with accused Rohit and Kiran for appearing in examination, scheduled for 21.03.2010 but she did not return and on enquiry, it was learnt from Raghubir Singh, father of Rohit Kumar and Kiran Kumari that his daughter had gone to Australia and she is living there with Rakesh Kumar and all these happened at the dictates of Rakesh Kumar and he demanded Rs. 25,00,000/- for her release. Further, the daughter of the complainant also informed him on mobile about mental and physical torture and she pleaded for her release. The incident was outcome of conspiracy of accused persons, named in the complaint petition. The said complaint was sent to S.H.O., Makhdumpur for registering it as First Information Report in terms of Section 156(3) Cr.P.C. and accordingly, Makhdumpur (Tehta) P.S. Case No. 185 of 2010 was registered.

The petitioner who is posted as Assistant Director (Training) in the State of Jharkhand, after the incident abandoned Tehta residence where his other family members are living, and in course of investigation, the I.O. of the case, after making perfunctory investigation, submitted a final report stating the case to be false and for taking action under Section 182 and 211 of the IPC against the petitioner, a separate prosecution report was filed for prosecuting the petitioner for the aforesaid offences. During investigation, the said



I.O. did not take even a single step to verify the allegation nor even informed the petitioner for his appearance before him for his further statement or to produce his witnesses before him for their statement and Sri. Shambhu Acharya, the I.O. filed a prosecution report before the Chief Judicial Magistrate, Jehanabad, on 21.08.2010 for prosecuting the petitioner for offences under Section 182 and 211 of the IPC and that was registered as G.O. Case No. 36 of 2010.

The learned Chief Judicial Magistrate, Jehanabad, on receipt of prosecution report, by order dated 21.08.2010, issued show-cause notice to the petitioner, which order was not even complied by the office and again on 24.12.2010, the petitioner was noticed to show-cause that was also not complied. In spite of non-compliance of the aforesaid order in mechanical manner, cognizance was taken holding that prima-facie case was made against the petitioner for offences under Sections 182 and 211 of the IPC and transfer the case to Sub-divisional Judicial Magistrate, Jehanabad for disposal.

The Sub-divisional judicial Magistrate by order dated 19.04.2012 although ordered for issuance of summon to the petitioner fixing 28.05.2012 but without waiting for its service ordered for issuance of warrant.

Submission on behalf of the petitioner is that prosecution



is barred under Section 195 Cr.P.C. as initially the complaint petition was filed before the C.J.M., Jehanabad so C.J.M., Jehanabad was competent to file prosecution report and not the I.O.. In this context, the learned counsel for the petitioner has relied upon the ruling reported in **AIR 1962 SC (1206)** in the matter of **Daulat Ram, Appellant Vs. State of Punjab, Respondent**. It was the Chief Judicial Magistrate, Jehanabad who alone was competent to file complaint in the Court of Competent jurisdiction and not the I.O. and, as such, on this ground alone, the order taking cognizance and further proceeding in G.O. Case No. 36 of 2010 are fit to be quashed.

Learned APP does not dispute the aforesaid contention.

In the aforesaid facts and circumstances of the case, as stated above, considering that initially the complaint case was filed in the court of Chief Judicial Magistrate, Jehanabad who send the said complaint under Section 156(3) Cr.P.C. to the Station House Officer, Makhdumpur for registering a case and investigation and accordingly, the complaint was registered as Makhdumpur P.S. Case No. 185/2010 so it was the Chief Judicial Magistrate, Jehanabad alone who ought to have filed the complaint in the court of competent jurisdiction and not Sri. Shambhu Acharya the I.O. who filed the prosecution report. Learned counsel for the petitioner relied upon the ruling which is fully



applicable in the present case.

In the result, this criminal miscellaneous application stands allowed and prosecution of the petitioner in Trial No. 2218 of 2012 arising out of G.O. Case No. 36 of 2010 and subsequent orders are hereby quashed.

(Jitendra Mohan Sharma, J)

sushma/-

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CAV DATE	-NA-
Uploading Date	
Transmission Date	

