

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33182 of 2014

Arising Out of PS.Case No. -120 Year- 2013 Thana -BIDUPUR District- VAISHALI(HAJIPUR)

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Nitin Kumar, son of Nageshwar Prasad Singh, resident of Village - Randaha, P.S. - Raja Pakar, District - Vaishali; presently residing at 6/295, Vinit Khand, P.S. - Gomati Nagar, District - Lucknow, Uttar Pradesh.

.... Petitioner.

Versus

1. The State of Bihar.
2. Harendra Rai @ Asharfi Rai, Son of Late Ramashish Rai, resident of Village - Hashanchak Chakausan, Police Station - Bidupur, District – Vaishali.

.... Opposite Parties.

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Appearance :

For the Petitioner : M/s. Sameer Ranjan, Bimal Kumar and
Birendra Kumar, Advocates.
For the State : Mr. Dashrath Mehta, A.P.P.
For the Informant/Opposite Party No.2: Mr. Anish Chandra, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 25-08-2017

Heard learned counsel for the petitioner, learned A.P.P. for the State and the learned counsel for the opposite party no.2.

2. This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 30.05.2014 passed in Bidupur P.S. Case No.120 of 2013, whereunder the court of the Chief Judicial Magistrate, Vaishali at Hajipur, took the cognizance of the offence under Sections 279 and 304A of the Indian Penal Code against Chandan Kumar, the driver of the Bikram Tampo bearing Registration No.BR-31P/5580, and the petitioner Nitin Kumar, the Director of the Oasis Residential Public School, Panapur Dharmpur, on perusal of the



charge-sheet and the materials available in the case diary.

3. The facts, leading to this application, are that the informant/opposite party no.2 Harendra Rai alias Asharfi Rai gave his written report to the Officer Incharge, Bidupur Police Station (Vaishali), on 23.04.2013 to the effect that Anshu Raj, aged about 13 years, the grandson of his elder brother Late Devendra Rai, was studying in Oasis Residential Public School, Panapur Dharmpur, for the last three years and was the student of Class-VI in that School. Anshu Raj used to go the School boarding on the school vehicle. On 23.04.2013 at about 06.45 A.M., in the morning, Bikram Tampo bearing Registration No.BR-31P/5580 of the School came in which Anshu Raj boarded for going to school. At about 07.30 A.M., the informant/opposite party no.2 heard rumour that the said Tempo turned-turtle at Mahnar Hajipur near Madhurapur in which school children sustained injuries and Anshu Raj was taken from there to Oasis Residential Public School, Panapur Dharmpur. Thereafter, the informant/opposite party no.2 alongwith other villagers went to the School and saw Anshu Raj lying in an injured condition on WINGER vehicle at the front of the gate of the school, where Vinay Shankar Sharma, the staff of the school, got them boarded on the WINGER vehicle to go to P.M.C.H, Patna, for the treatment of Anshu Raj. When they reached there, the doctor of the P.M.C.H. Patna, declared Anshu Rah brought dead. On hearing the information about the



death of Anshu Raj, the driver of the WINGER vehicle fled away from the P.M.C.H., Patna. Thereafter, the informant/opposite party no.2 alongwith the dead body of Anshu Raj came to Oasis Residential Public School, Panapur, Dharmpur, and tried to enquire about the incident but no one of the management of the school was present there. Earlier, several accidents had taken place in respect of the school children. The informant/opposite party no.2 claimed that the accident took place due to rash and negligent driving of the Driver of Bikram Tampo bearing Registration No.BR-31P/5580 engaged by the school and also due to latches of the Management of the Oasis Residential Public School.

4. On the basis of the aforesaid written report dated 23.04.2013 of the informant/opposite party no.2 Harendra Rai alias Asharfi Rai, Bidupur P.S. Case No.120 of 2013 was instituted on 23.04.2013 under Sections 279 and 304A of the Indian Penal Code against the Driver of the Tampo bearing Registration No.BR-31P/5580 and Director of the Oasis Residential Public School, Panapur Dharmpur.

5. On investigation, the police submitted the chargesheet for the offence under Sections 279 and 304A of the Indian Penal Code against Chandan Kumar, the driver of the Bikram Tampo bearing Registration No.BR-31P/5580, and petitioner Nitin Kumar, the Director of the Oasis Residential Public School. Thereafter, the Chief Judicial Magistrate, Vaishali at Hajipur, took the cognizance of the offence under



Sections 279 and 304A of the Indian Penal Code against them through the impugned order against which the present application has been filed by the petitioner Nitin Kumar, the Director of Oasis Residential Public School.

6. Learned counsel for the petitioner submits that it would appear from the F.I.R. and the materials available in the case diary that the Bikram Tampo bearing Registration No.BR-31P/5580, which was turned-turtle at the time of carrying the students from their houses to the school, in which Anshu Raj, the grandson of the elder brother of the informant/opposite party no.2, was also sitting, was being driven by Chandan Kumar. While Anshu Raj with the informant/opposite party no.2 was taken to the P.M.C.H., Patna, boarding on WINGER vehicle but he was declared brought dead by the doctor there. As such, the petitioner, who is the Director of the Oasis Residential Public School, Panapur Dharmapur, was neither present in the said Bikram Tempo nor the said Tempo was being driven by the petitioner. As such, taking the cognizance of the offence under Sections 279 and 304A of the Indian Penal Code against the petitioner through the impugned order dated 30.05.2014 by the Chief Judicial Magistrate, Vaishali at Hajipur, is illegal and amounts to an abuse of the process of the court.

7. On the other hand, learned counsel for the informant/opposite party no.2 submits that regarding the incident, no



information was given to the informant/opposite party no.2 by the petitioner Nitin Kumar, the Director of the Oasis Residential Public School, Panapur, Dharmpur, after turn-turtling of Bikram Tempo, in which Anshu Raj, the grandson of the elder brother of the informant/opposite party no.2 was present, as such, there is also latches on the part of the petitioner being the Director of the Oasis Residential Public School, Panapur Dharmpur.

8. Learned A.P.P. for the State while submitted that there is no illegality in the impugned order but fairly conceded that the petitioner is the Director of the Oasis Residential Public School, Panapur, Dharmpur, and the tempo which met with an accident, in which Anshu Raj, the grandson of the elder brother of the informant, was sitting and sustained injury and died, later on, was being driven by Chandan Kumar, the Driver of the said Tempo and not by this petitioner.

9. To appreciate the rival submissions of the parties, it is relevant to peruse the provisions of Sections 279 and 304A of the Indian Penal Code, which are quoted as under:

“279. Rash driving or riding on a public way.- Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine



which may extend to one thousand rupees, or with both.”

“304A. Causing death by negligence.- Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

10. On bare reading of Section 279 of the Indian Penal Code, it appears that the person, who is driving the vehicle rashly and negligently on public way, would only be liable for punishment under Section 279 of the Indian Penal Code whereas, Section 304A of the Indian Penal Code clearly indicates that there should be participation of a person in rash and negligent act causing the death of any person.

11. In the present case, from the F.I.R. and the case diary, it is apparent that the Bikram Tempo bearing Registration No.BR-31P/5580, in which Anshu Raj, the grandson of the elder brother of the informant-opposite party no.2 was sitting, while was engaged by the Management of the Oasis Residential Public School, Panapur, Dharmpur, but the same was being driven by the co-accused Chandan Kumar. In that course, Anshu Raj sustained injury and succumbed to the injury. As such, only on the ground that the tempo, which was being driven by Chandan Kumar, was engaged by the petitioner being the Director of Oasis Residential Public School to carry the students to school from their



houses responsibility could not be fixed against the petitioner for the offence under Sections 279 and 304A of the Indian Penal Code. As such, the impugned order dated 30.05.2014 passed in Bidupur P.S. Case No.120 of 2013 by the Chief Judicial Magistrate, Vaishali at Hajipur, taking of the cognizance of the offence under Sections 279 and 304A of the Indian Penal Code against the petitioner is illegal and amounts to an abuse of the process of the court.

12. Accordingly, the impugned order dated 30.05.2014 passed in Bidupur P.S. Case No.120 of 2013 by the Chief Judicial Magistrate, Vaishali at Hajipur, in respect of the petitioner, is hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

P.S./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08.09.2017.
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