

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25025 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- KISANGANJ

- =====
1. Mustaquim Kamal alias Md. Mustaquim Kamal, son of Late Sanglu Kamal, resident of Village-Majlishpur, Police Station- Gowalpokhar, District-Uttar Dinajpur, West Bengal, at present residing at Mohalla-Dharamshala Road, Police Station and District - Kishanganj.
 2. Dr. Tapas Kumar Barman alias Tapas Barman, son of Kunj Mohan Barman.
 3. Dr. Bijeta Barman, wife of Dr. Tapas Kr. Barman.
Nos.2 and 3 resident of N.H. 31 Near Bus Stand, Islampur, Police Station- Islampur, District - Uttar Dinajpur, West Bengal.

.... Petitioners.

Versus

1. The State of Bihar.
2. Sandeep Kumar Modi, son of Shri Bishnu Madhav Prasad Modi, resident of Dharamshala Road, Ward No.9, P.O., P.S. and District-Kishanganj.

.... Opposite Parties.

=====

Appearance :

For the Petitioners	:	None.
For the State	:	Mr. Tapeswar Sharma, A.P.P.
For the Opposite Party No.2	:	None.

=====

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

Date: 02-11-2017

Heard only learned A.P.P. for the State as none appears on behalf of the petitioners and the opposite party no.2.

2. This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 08.10.2009 passed in Complaint Case No.602 of 2008, whereunder the court of the Sub Divisional Judicial Magistrate, Kishanganj, summoned the accused petitioners and one Bishnu Madhav Prasad Modi, on enquiry, under Section 204 of the Code of Criminal Procedure, finding prima facie case under Sections 465, 467, 468, 471, 420 and 120-B of the Indian Penal Code



against them.

3. The facts, leading to this application, are that the complainant-opposite party no.2 Sandeep Kumar Modi filed Complaint Case No.602 of 2008 in the court of the Chief Judicial Magistrate, Kishanganj, with the contention that he purchased Tata Sumo Vehicle bearing Registration No.S.K.02-6213, Engine No.483DL41QQQ732541, Chesis No.385003EQQ909828, Model No.1999 to Suresh Bansal, son of Kundan Lal Bansal, resident of village-Millat Bazar South-Sikkim, P.S. Gangtok, District-Gangtok and got the vehicle transferred in his name by giving an application before the District Transport Office, Kishanganj. The petitioner no.1 Md. Mustaquim Kamal was engaged by the complainant-opposite party no.2 as the Driver of the vehicle. The complainant-opposite party no.2 was in the service in a Private Company at Guwahati (Assam) and he used to come at his village-Kishanganj on the occasion of festivals for one or two times in the year. The petitioner nos.2 and 3, Dr. Tapas Kumar Barman alias Tapas Barman and Dr. Bijeta Barman, brother-in-law and sister of the complainant-opposite party no.2 respectively, took the said vehicle for 10-15 days alongwith the photocopy of the papers of the vehicle but despite of passing over one month, the vehicle was not returned and both refused to return the vehicle saying that the said vehicle belongs to his father Bishnu Madhav Prasad Modi. On hearing this, the complainant-opposite party no.2 became surprised and enquired into the matter, then came to know that his father Bishnu Madhav in collusion with the petitioner nos.2 and 3 got transferred the aforesaid vehicle in his name by



putting his forged signature. Thereafter, the complainant-opposite party no.2 gave an application before the District Transport Officer, Kishanganj, who cancelled the ownership of Bishnu Madhav Prasad Modi, the father of the complainant-opposite party no.2, with regard to the aforesaid vehicle and substituted his name as the owner of the vehicle. In spite of several requests made by the complainant-opposite party no.2, the vehicle was not returned to him.

4. The police, on investigation, submitted the chargesheet against the accused-petitioners and Bishnu Madhav Prasad Modi. Thereafter, the court of the Sub Divisional Judicial Magistrate, Kihanganj, on enquiry, summoned the accused- petitioners and Bishnu Madhav Prasad Modi, under Section 204 of the Code of Criminal Procedure, finding prima facie case under Sections 465, 467, 468, 471, 420 and 120-B of the Indian Penal Code through the impugned order.

5. From perusal of the contents of the complaint petition, it appears that the allegation is against Bishun Madhav Prasad Modi, the father of the complainant-opposite party no.2, to get transferred the Tata Sumo Vehicle bearing Registration No.S.K.02-6213 in his name giving application before the District Transport Office, Purnea, by putting forged signature of the complainant-opposite party no.2. As such, no ingredient constituting the offence under Sections 465, 467, 468, 471, 420 and 120-B of the Indian Penal Code is attracted against the accused-petitioners, who are said to be the driver of the aforesaid vehicle, brother-in-law and the sister of the complainant-opposite party no.2. As such, the continuance of



the criminal proceedings on summoning the accused-petitioners through the impugned order would amount to an abuse of the process of the court.

6. Accordingly, the impugned order dated 08.10.2009 passed in Complaint Case No.602 of 2008 by the court of the Sub Divisional Judicial Magistrate, Kishanganj, with respect to summoning the accused-petitioners, on enquiry, under Section 204 of the Code of Criminal Procedure, finding prima facie case under Sections 465, 467, 468, 471, 420 and 120-B of the Indian Penal Code is hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.11.2017.
Transmission Date	08.11.2017.

