

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 49829 of 2013

Arising out of P.S. Case No. - 3352 Year - 2011 Thana -VAISALI COMPLAINT CASE District - VAISHALI (HAJIPUR)

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S.M. Babar Ali, Son of Md. Mushtaque, Resident of 5/M/31 Bhui Kailash Road,
P.S. - Eqbbalpur, Kolkata - 700023

.... Petitioner

Versus

1. The State of Bihar
2. Md. Sharif, Son of Late Jaan Mohammad, Resident of Daud Nagar, P.S. -
Vaishali, District - Vaishali

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Arshad Jameel Hashmi, Advocate
Mr. Kamal Kishore Singh, Advocate

For the Opposite Party No. 2 : Mr. Surendra Kishore Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 17-01-2017

Heard learned counsel for the petitioner as well as
opposite party the State of Bihar and the opposite party no. 2 Md.
Sharif.

2. This is an application for quashing the order dated
09.08.2012 passed in Complaint Case No. 3352 of 2011 (Tr. No. 4406
of 2012) whereby the learned court below has issued process of
summons against the petitioner to face trial for offence under Section
365 of the Indian Penal Code.

3. Opposite party no. 2, the complainant alleged that
his son Md. Muslim was a truck driver and was driving a truck tanker
under this petitioner at Kolkatta. There was dispute due to wages of
rupees two lakhs, hence, the son of the complainant left the job.



However, on persuasion of the petitioner on 05.10.2011, the son of the complainant again returned back to drive the truck of the petitioner thereafter he never returned nor the petitioner gave a satisfactory reply rather informed that the son of the complainant had taken the Truck No. WB 11 B/6392 but he did not return.

4. Five witnesses were examined under Section 202 Cr.P.C. and they all supported the allegation on the basis whereof the impugned order was passed.

5. Submission of the petitioner against the impugned order is that the only material is suspicion against the petitioner. The court below, during inquiry, had called for a report from the local police station by order dated 24.11.2011. After verification of the allegation the police report was received in the court below which would be evident from the order dated 17.11.2012. However, the same was not considered while passing the impugned order nor a copy of the same is available on the record. His next submission is that, in fact, son of the complainant was carrying the truck of the petitioner from Alwar (Rajasthan) to Asom and the same was loaded with edible oils. The son of the petitioner either sold away or otherwise misappropriated the edible oils and left the truck near some lonely place and fled away and thereafter he is concealing himself. For missing of the truck Barodamev Police Station Case No. 2011 of 2011



in the district of Alwar was registered under Section 407 of the Indian Penal Code and just to save the skin present, false case has been filed.

6. On the other hand, learned counsel for the opposite party no. 2 submits that eye-witnesses have supported the prosecution case against the petitioner of commission of abduction of the son of the complainant. Even suspicion based on material is sufficient to issue summons against the accused to face trial as has been done by the impugned order. Though a report was called for during inquiry by the court below. However, it is not necessary that at the time of issuance of summons the report should also be considered. Moreover, in the circumstances of this case, when the report is not available on the record nor it is case of the petitioner that the report is against the case of the complainant the impugned order cannot be faulted for non-consideration of unavailable report. The next contention is that the claim of the missing of the truck of the petitioner and its recovery is a planned activity to save the skin and even if this be assumed to be a plausible defence of the petitioner that cannot be a ground to quash the impugned order.

7. The law is well settled that the criminal prosecution is permissible even on suspicion if the suspicion is supported by material on the record. In the present case, the eye-witnesses have stated that the son of the complainant was taken away



by the petitioner to re-join his job of driver and thereafter the son of the complainant was missing. There was motive alleged against the petitioner that rupees two lakhs of the son of the complainant was due with the petitioner, hence, to grab the aforesaid money the son of the complainant might have been abducted or murdered. Though the record reveals that a report was called for from the local police but a copy of the same has not been brought on the record, hence, only non-consideration of a part material would not be sufficient to quash the criminal proceeding at the very threshold.

8. Likewise, the probable defence of the accused that the victim fled away along with the truck of the petitioner and committed criminal misappropriation by removing the edible oils is also no ground to quash the criminal proceeding.

9. Therefore, I do not find any merit in this application, accordingly, it stands dismissed.

(Birendra Kumar, J.)

Kundan

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