

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43109 of 2012

Arising Out of PS.Case No. -2151 Year- 2009 Thana -null District- BHAGALPUR

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Md. Jawaid Manzoor, son of late Md. Manzoor Habib, Resident of Mohalla-
Barahpura, P.S.- Ishakchak, District- Bhagalpur.

.... Petitioner/s

Versus

1. State of Bihar
2. Md. Masoom Habib, son of Late Abdul Habib, Resident of Mohalla- Barahpura,
P.S.- Ishakchak, District- Bhagalpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Najmul Hodda, Advocate.

For the Opposite Party/s : Mr. Md. Aslam Ansari, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 08-09-2017

Heard learned counsel for the petitioner and the State.

2. Petitioner is one of the accused in Complaint Case No. 2151 of 2009 which is pending in the court of the learned Judicial Magistrate, 1st Class, Bhagalpur. Cognizance was taken by the court on 04.11.2011 under Sections 344/34 of the Indian Penal Code against the said cognizance order, a revision application being Cr. Rev. No. 33 of 2012, was preferred by the petitioner before the learned Sessions Judge, Bhagalpur, which was rejected vide order dated 30.04.2015 and now the petitioner has preferred this quashing application for setting aside the impugned order dated 30.04.2012 as



well as the cognizance order dated 04.11.2011 by invoking inherent jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973.

3. The brief fact of this case is that O.P. No. 2 of this application namely Md. Masoom Habib had filed a police case namely Ishakchak P.S.Case No. 60 of 2008 under Section 364 of the Indian penal Code which was registered on 15.05.2008 alleging kidnapping of his son Md. Mahtab Masoon @ Manni by the accused persons. Police, on conclusion of investigation, submitted closure report after recovery of Md. Mahtab Masoon @ Manni from the platform of Bhagalpur Railway Station. After recording his statement, the police found the case false but recommended for initiating a prosecution against the informant under Sections 182 and 211 of the Indian Penal Code. A protest petition was filed by the informant before the learned Chief Judicial Magistrate treating the same as complaint, enquiry was held and cognizance order was passed. The fact stated in the complaint, in brief, is that his son Md. Mahtab Masoon @ Manni had gone to play outside the hosue and it is alleged that accused persons came on a Maruti van and kidnapped his son.

4. Learned counsel appearing on behalf of the petitioner submits that complainant is the own uncle of the petitioner. The complainant's son Md. Mahtab Masoon @ Manni was an accused in a



bomb blast case and in order to evade from arrest, he escaped away and was living in Kanpur, he returned back after almost 09 months on the occasion of *Moharrum* and the police apprehended him at the platform of Bhagalpur Railway Station. Police recorded his statement (Annexure-3 of this application) and submitted final form finding the case false and recommended for prosecuting the informant under Sections 182 and 211 of the Indian Penal Code. Moreover, there is also a land dispute between the petitioner and his uncle complainant and a civil suit bearing T.S. No. 101 of 2004 is also pending and as they are in inimical terms, so this false case has been lodged. The learned Judicial Magistrate did not enquire into the matter property and this fact was not considered that police, after recovery of the boy from the platform of Bhagalpur Railway Station, recorded his statement and found the case false, but no question in this regard was asked by the learned Magistrate during enquiry.

5. Learned counsel for the State submits that factual aspect of the case cannot be considered at this stage rather it is a defence of the petitioner.

6. Having considered the rival submissions of both sides and on perusal of record, this Court finds that the O.P. No. 2, the complainant, had filed FIR of Ishakchak P.S. Case No. 60 of 2008 against the petitioner and others alleging that his son, 14 years of age,



was kidnapped by them while he was playing in the day hours outside his house. During investigation, police recovered the complainant's son Md. Mahtab Masoon @ Manni from the platform of Bhagalpur Railway Station and recorded his statement stating therein that he had gone to Kanpur and was working as a Khalasi in a tempo of a particular person and he had left the place because of his involvement in a case of bomb explosion. Finding no any other evidence, the police submitted final form and on protest petition, the learned Judicial Magistrate considered the matter and took cognizance after completing enquiry. It is also evident that both sides are closely related and there is title suit pending between them since 2004. The learned Judicial Magistrate failed to put question with regard to recovery of the boy and his statement earlier made before the police. In the complaint, there is no any eye witness except statement of the complainant and his family members, so in the backdrop of these facts, in particular, recovery of the boy from the platform of Bhagalpur Railway Station and his statement recorded by the police admitting therein that he had left the place on his own and had gone to Kanpur, so the impugned order dated 30.04.2012 passed by the learned Sessions Judge, Bhagalpur in Cr. Rev. No. 33 of 2012 as well as cognizance order dated 04.11.2011 passed in Complaint Case No. 2151 of 2009 and subsequent criminal proceeding with respect to this



petitioner, is set aside.

7. In the result, the application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.09.2017
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