

**HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

**Criminal Petition No.3893 of 2018**

**ORDER:**

In this petition filed under Section 482 Cr.P.C, the petitioner seeks to quash the proceedings against him in S.C.No246 of 215 on the file of Metropolitan Sessions Judge, Nampally, Hyderabad.

2a) The brief facts of complaint allegations are that on 11.03.2015 at about 9.15 AM, when the complainant and his wife came to his tea stall running opposite to High Court Gate No.6, his son-in-law—Shadev brought his two years old daughter—Monika and left her at his tea stall; at about 9.45 AM, they noticed that the said girl who was playing on footpath, was missing. Immediately they searched the surroundings, but they could not find the girl. In the meanwhile, one person came to their tea stall and informed that the girl was found playing with one person who was having long hair and beard. Immediately he went to Charminar PS and lodged a complaint to the police to take necessary action for tracing out his missed daughter—Monika.

b) Police of Charminar PS registered a case in Cr.No.55 of 2015 and after investigation filed charge sheet against the accused for the offence under Section 364A IPC. The learned Metropolitan Sessions Judge, Hyderabad took cognizance of the same and registered as S.C.No.246 of 2015.

3) Heard arguments of Polisetty Hanumanth Rao (Party-in-person) and learned Additional Public Prosecutor (TG).

4) Severely fulminating the charge sheet allegations, petitioner would submit that on the alleged date of kidnapping i.e. on 11.03.2015, he was not at Hyderabad and on the other hand, on that date he attended Government General Hospital, Guntur to take treatment for his urinary problem and therefore, his presence at Hyderabad and kidnapping the victim girl does not arise and it is a myth and he was unnecessarily implicated in the case. He thus prayed to allow the petition and quash the proceedings against him.

5) Learned Additional Public Prosecutor opposed the petition stating that CC camera footage arranged at Gate No.6 of the High Court at the vicinity of which the offence took place, clearly revealed the presence of the accused at the scene of offence and later basing on the tower location of his cell phone the police went to his house and rescued the girl from the clutches of the accused and therefore, it is preposterous to contend that he is innocent.

6) The point for consideration is:

*“Whether there are merits in this petition to allow?”*

7) **POINT**: I have given my anxious consideration to the charge sheet details. The prosecution case is that the complainant has been running the tea cart in front of the High Court Gate No.6 and on 11.03.2015 at 9.15 AM while he and his wife were at tea stall, his son-in-law, Shadev

brought his two years old girl—Monika and left her at tea stall and while they were engaged in the work, the girl was playing on the footpath in front of High Court and sometime thereafter the girl was found missing. Therefore, they gave report to the police and basing on the CC camera footage arranged at High Court Gate No.6, the police could locate the presence of the accused who used to come to High Court to attend his case and later, basing on the tower location of his cell phone, the police went to his house at Guntur and rescued the girl from the clutches of the accused. That is how the police filed the charge sheet against the accused.

8) Be that it may, the contention of the petitioner/accused is that on 11.03.2015 he was not at Hyderabad but he was at Government General Hospital, Guntur for treatment of his urinary problem and therefore he was innocent.

9) It is trite law that the person who takes *alibi* plea, has to establish the same by cogent evidence during the course of trial. The Apex Court in ***Binay Kumar Singh v. State of Bihar***<sup>1</sup> observed as follows:

*Para 23: x x x x ... that it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi.”*

Similarly, in ***Mukesh and others v. State of NCT of Delhi and others***<sup>2</sup>, it was observed thus:

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<sup>1</sup> (1997) 1 SCC 283

<sup>2</sup> AIR 2017 SC 2161

*“Para 243: x x x x .... when a plea of alibi is taken by the accused, the burden is upon him to establish the same by positive evidence after the onus as regards the presence on the spot is established by the prosecution.”*

Therefore, basing on his plea alone, criminal proceedings cannot be quashed. There is a strong *prima facie* accusation against him. Therefore, the petitioner shall face the trial and vindicate his defence.

10) Accordingly, the Criminal Petition is dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 07.09.2018  
Murthy



**U. DURGA PRASAD RAO, J**