

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20888 of 2015

Arising Out of PS. Case No.-269 Year-2007 Thana- DHANARUA District- Patna

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1. Kumar Anand Ranjan, S/o Sri Raghubir Singh Yadav, Proprietor, Maa Shitla Escorts Co. Ltd. Bari Pahari, Patna - 7, Resident of Mohalla Bari Pahari, P.S. Agamkuan, District Patna.
 2. Upendra Kumar, S/o Late Babu Thakur, Resident of Village Sohgi, P.S. Gauri Chak, District Patna an employee of Maa Shitla Escorts Co. Ltd. Bari Pahari, Patna-7, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Birendra Kumar Sharma, S/o Bindeshwari Prasad Sharma, At present Resident of Village Jalalpur, P.O. and P.S. Dhanarua, District Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar Bhartiya, Advocate Mr. Shyam Bihari Prasad, Advocate
For the O.P. No. 2	:	Mr. Chandra Moleshwar, Advocate
For the State	:	Mr. Sunil Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 05-08-2019

Heard learned counsel for the parties.

2. The petitioners have sought for quashment of order dated 02.09.2014 passed in Cr. Revision No. 709 of 2009 by the learned 2nd Additional Sessions Judge, Patna whereby the learned Sessions Judge has affirmed the order of cognizance dated 14.05.2009 passed by the learned Sub-Divisional Judicial Magistrate, Masaurahi in Dhanarua P.S. Case No. 269 of 2007



whereby cognizance was taken against the petitioners after differing with the Police Report No. 315, dated 31.08.2008.

3. According to FIR, the informant had purchased the referred Hydrolic Tractor with Trailor from Maa Shitla Escorts Agency on 17.09.2007. Some unknown person stolen away the said tractor on 26.11.2007. Suspicion was there against the petitioners, who are proprietor and driver of Maa Shitla Escorts Agency, that they might have committed theft of the said tractor for the reason that the petitioners were threatening to the informant to make payment of the remaining dues, otherwise the complainant would face the consequences.

4. During investigation of the case, the tractor and trailor could not be recovered and no evidence beyond suspicion came against the petitioners. Hence, the police had not set up the petitioners for trial.

5. During course of hearing of this application, learned counsel for the petitioners as well as the State have categorically gone through the paragraphs of the case diary which are referred in the order of cognizance and in none of the paragraphs, there is any material, save and except, suspicion against the petitioners.

6. Submission of learned counsel for the petitioners is that the informant i.e. the purchaser of the tractor had issued a



cheque of the cost of the tractor due with the informant and the cheque bounced. Thereafter, one of the petitioners filed Complaint Case No. 1052(C) of 2007 against the informant of this case on 17.09.2007 and, by way of retaliation, in the present FIR dated 27.11.2007, suspicion of commission of theft was raised against the petitioners.

7. Submission is that the case is of malicious prosecution because the petitioners are men of repute having business of 'Agency' of sale of tractors and they are not even suspected to be indulged in such type of activities. Even if, the tractor would have been recovered from the possession of the petitioners, they would have a better claim on the tractor because a major amount of cost of the tractor was not paid by the informant of this case. However, in the present case, recovery was not made from possession of the petitioners.

8. Learned counsel for the informant opposed the prayer on the ground that even suspicion is sufficient to ask the accused persons to face the trial and the two courts below have applied their mind on the issue and they have concurred in their view that this was a fit case of cognizance.

9. The law is well settled that when there is a very weak chance of conviction, the criminal trial should not be allowed to go



on for apparent reason that the same would amount to abuse of the process of the Court.

10. In this case, even suspicion is due to some motive arising out of the complaint case of dishonour of cheque filed by the petitioners against the informant of this case. Therefore, in my view, the prosecution of the petitioners amounts to abuse of the process of the Court in absence of any material to substantiate the allegation. Hence, the impugned order and entire criminal prosecution against the petitioners stand quashed and this application stands allowed.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
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