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(2010) 08 PAT CK 0029

In the Patna High Court

Kali Prasad and Birendra Prasad @ Birendra Kumar — APPELLANT

Vs

The State of Bihar and Ram Pravesh Prasad — RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 164, 482
Penal Code, 1860 (IPC) — Section 363, 365

Citation : (2010) 08 PAT CK 0029

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Akhilesh Chandra, J.—HeardJlearned Counsel for the petitioner and learned Additional Public Prosecutor for the State. There is none on behalf of opposite party No. 2 the complainant to represent this application.

2. This is an application u/s 482 of the Criminal Procedure Code seeking quashing of the order dated 25.02.2005 passed in Cr. Rev. No. 248/2004 by learned Sessions Judge, Saran, confirming the order dated 24.08.2004 passed by Shri Hari Shankar, learned Judicial Magistrate, Chapra, refusing the prayer the discharge the petitioners for the offences u/s 363 and 365 of the Indian Penal Code in case arising out of Mashrak P.S. Case No. 99/1999.

3. Undisputedly, opposite party No. 2 filed Complaint Case No. 1308/1999 in the court of Chief Judicial Magistrate, Saran at Chapra for the offence u/s 363 and 365 of the Indian Penal Code against the petitioners alleging therein that they arrived in the house of one Baijnath Prasad where minor son of the complainant Akhilesh aged about 11 years was engaged for domestic work. Next morning they returned and son of the complainant accompanied them to carry the luggage up to the railway station Mashrak, when the boy did not returned in time, search was made and it reveals that he also proceeded with the petitioners for Gopalganj. The petitioners were approached and assured to return the boy after a week since he has gone at the house of their relative, but when the boy

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could not return, . complainant was filed, sent before police u/s 156(3) of the Criminal ProcedureV Code, where case was instituted, after investigation police submitted final form, also taking into consideration statement of the victim made u/s 164 of the Criminal Procedure Code, but taking a different view, Chief Judicial Magistrate took cognizance giving rise to Cr. Misc. No. 7860/2001 which appears dismissed vide order dated 09.01.2004, finding no reason to interfere at the relevant stage.

4. The petitioners subsequently prayed for their discharge which was refused giving rise to Cr. Rev. No. 248/2004 that too was dismissed by learned Sessions Judge vide order dated 25.02.2005 giving rise to the instance case.

5. The learned Counsel submits that there is absolutely no evidence against the petitioners even the victim boy has not named them, though, he was missing and recovered after reasonable long period, but not from the custody of the petitioners or any person related with.

6. Learned Additional Public Prosecutor on going through the case diary also concedes that statement of witnesses examined during investigation gives altogether different story not in support of the averments made in the complaint cum First Information Report or statement of informant and his wife who also are not eye witnesses to any occurrence.

7. The order of the court below refusing prayer for discharge indicates practically nothing except that cognizance has already been taken for the offences against the petitioners. From the order of the Revisional Court also it appears that learned Sessions Judge has mainly considered none-interference of this court at the stage of cognizance but, he too appears not have taken any pain to go through the materials collected during investigation.

8. At the time of proceeding for trial framing the charge specially when disposing of the prayer for discharge, the trial courts are required to consider materials available on records produced by the prosecution with this end and view whether there any prima facie case is made out against the accused persons and in case of the materials left unrebutted what could be the possible result, and if it goes in favour of the prosecution, no doubt, trial must proceed after framing the charge but without considering all these aspects the courts below have refused to discharge the petitioners and as stated and fairly conceded by learned Additional Public Prosecutor on going through the case diary that there absolutely no materials against the petitioners to proceed with the trial.

9. In view of the above, the impugned orders are set aside and the application stands allowed. It is needless to proceed with the trial against the petitioners.

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