

(2007) 11 JH CK 0046
In the Jharkhand High Court
Case No : Criminal M.P. No. 470 of 2004

Md. Shamim

APPELLANT

Vs

State of Jharkhand, Kamal Sunkar Srivastava, Dinesh Paswan
and Amit Pathak

RESPONDENT

Date of Decision : 21-11-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2008) 56 BLJR 965

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Prakash Chandra Roy, for the Appellant; APP and Vijoy Gopal, For the O.P. Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J.—The petitioner is aggrieved by the order dated 12.3.2004 passed by learned Chief Judicial Magistrate, Giridih in Giridih (M) P.S. Case No. 225 of 2003, whereby the learned court below, while taking cognizance of the offence under Sections 420, 467, 468, 471 and 120B of the Indian Penal Code against one accused, has refused to take cognizance and to issue process against the opposite party Nos. 2 to 4.

2. Opposite party No. 2 is the District Transport Officer, Giridih and opposite party Nos. 3 & 4 are the Assistant District Transport Officers, Giridih.

3. The petitioner's case is that he had filed a written complaint against Hari Narain Singh and four others stating, inter alia, that the petitioner agreed to purchase a Truck from Hari Narain Singh, who, in collusion with the Transport Officers (O.P. Nos. 2 to 4), produced the documents relating to registration of the Truck No. JH 11B-0402. They also assured the petitioner about the genuineness of the papers relating to the vehicle and on their assurance, the petitioner agreed to purchase the said Truck from Hari Narain Singh on 6.1.2003 for a

consideration amount of Rs. 3,11,000/-. At the time of registration of the said Truck, the petitioner came to know that the said vehicle purchased by him is a stolen vehicle with original Registration No. UP 25B-9889, which was changed by the vendor in collusion with the District Transport Officer, Giridih. Subsequently, the said Truck was seized by the police on the ground that the said Vehicle is stolen one and its original Registration number was BR 1G-4444.

4. It has been stated that after the aforesaid complaint, the learned Chief Judicial Magistrate, Giridih directed the local police to institute a case and to investigate the same. Giridih Police instituted the case and registered the same as Giridih (M) P.S. case No. 225 of 2003.

5. The case was investigated by the police and after completion of investigation, charge sheet was submitted against Hari Narain Singh.

6. The grievance of the petitioner is that O.P. Nos. 2 to 4, the officers of the District Transport Office, Giridih, who were in collusion with Hari Narain Singh, were not sent up for trial in spite of collection of sufficient material in the case diary.

7. The petitioner, thereafter, filed a protest petition before the learned Chief Judicial Magistrate, Giridih, who heard the petition and by the impugned order rejected the petitioner's prayer to take cognizance of the said offence against O.P. Nos. 2 to 4.

8. Learned Counsel appearing on behalf of the petitioner submitted that there were materials on record to show prima facie connivance of the said officers of the District Transport Office, Giridih and a clear case of criminal conspiracy was made out against them. The vehicle was registered in the District Transport Office violating the provisions of law and the said fact itself was sufficient to constitute the offence of criminal conspiracy. Despite the above, the statements of witnesses, namely, Haider Ali, Md. Kalim, Ishaque and Bhubneshwar Yadav sufficiently supported the allegation and complicity of the said O.P. Nos. 2 to 4. Learned C.J.M. without application of mind has acted like a post office and relied on the charge sheet submitted by the Investigating Officer against Hari Narain Singh. Learned C.J.M. erroneously refused to take cognizance of the offence of criminal conspiracy against O.P. Nos. 2 to 4, despite the presence of sufficient materials in the case diary, which, according to him, amounts to mis-carriage of justice.

9. O.P. Nos. 2 to 4 appeared and filed counter affidavit stating, inter alia, that the petition is frivolous, baseless and not maintainable and there is no infirmity or illegality in the impugned order of the learned C.J.M. There is no convincing material on record to show any complicity for taking cognizance of any offence against O.P. Nos. 2 to 4. Learned court below after hearing the parties and giving proper consideration to the materials on record and after applying its mind has rejected the protest petition and has taken cognizance only against Hari Narain Singh. Learned court below has taken into notice that the investigation is still

pending against Rajesh Kumar and Hardeo Narain Singh. It has been stated that the complainant-petitioner himself has disclosed that the talk of purchase of the Truck was materialized at the office of one Shankar Transport Office and an agreement was made and payment in instalment was also made. O.P. No. 2, who is the District Transport Officer and O.P. Nos. 3 & 4, who are the Assistant District Transport Officers, have got nothing to do with the said transaction. The allegation against O.P. Nos. 2 to 4 that they had assured the petitioner regarding the genuineness of the papers of Truck is concocted. The petitioner, who purchased the stolen Truck, has made the said allegation when he found it difficult to get registration number of the Truck from the District Transport Office.

10. Mr. Vijoy Gopal, learned Counsel appearing on behalf of opposite party Nos. 2 to 4 submitted that neither I.O. nor the learned Chief Judicial Magistrate has found sufficient material for taking cognizance of the alleged offence against the opposite party Nos. 2 to 4. The law does not permit issuance of summons or taking cognizance without sufficient material on record. Learned C.J.M. has perused the record and applied his mind and has not found any conspiracy of the said accused persons (O.P.Nos. 2 to 4). No prima facie case is made out against them. There is no infirmity or illegality in the impugned order of the learned C.J.M and the same does not warrant any interference by this Court.

11. I have heard learned Counsel for the parties and considered the submissions made by them as also the facts and materials on record. The I.O., after completion of investigation, has submitted charge sheet against the vendor of the Truck, namely, Hari Narain Singh and the investigation is still pending against two other persons. The I.O. has not found sufficient material to constitute an offence u/s 120B I.P.C. or any other offence against O.P. Nos. 2 to 4. On protest petition of the complainant-petitioner, learned C.J.M. heard the parties and considered the points raised by the petitioner. Learned C.J.M. also perused the case diary and materials available on record and has also noticed the supervision note in which the case has been found true against accused Hari Narain Singh, Rajesh Kumar and Hardeo Narain Singh. The allegation of consulting the District Transport Officer and other officials of the District Transport Office by the complainant has not been found supported by any convincing material. Learned court below has concluded that prima facie case is made out against the accused. Hari Narain Singh u/s 420, 467, 468 and 120B I.P.C. and, as such, he has taken cognizance of the said offences against him. Learned court below has also noticed that the investigation is still pending against the two other co-accused. Though the impugned order has not been properly worded, the same cannot be said to be vitiated on that ground.

12. I find no substance in the submissions of the learned Counsel for the petitioner that learned C.J.M. has acted mechanically and has not applied his mind. The case is still under investigation against two other co-accused and the matter has not been closed. The court has also got ample power to issue summons against any person and frame charge, if any tangible evidence is

brought before the court in course of trial.

In view of the above discussions, there is no merit in this petition and the same is, accordingly, dismissed.