

(2016) 01 JH CK 0039
In the Jharkhand High Court
Case No : Cr. M.P. No. 2391 of 2015

Rakesh Kumar

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Constitution of India, 1950 — Article 51 A (a), Article 51-A (a)
Criminal Procedure Code, 1973 (CrPC) — Section 216, Section 228, Section 397,
Section 41 A (1), Section 41 A(1), Section 41A(1), Section 482, Section 73, Section 82
Penal

Citation : (2016) 1 AIRJharR 357 : (2016) CriLJ 1561 : (2016) 2 ECrC 214 :
(2016) 2 JBCJ 167 : (2016) 1 JLJR 686

Hon'ble Judges : Dhirubhai Naranbhai Patel, J.

Bench : Single Bench

Advocate : Krishna Gopal Sharma, Sr. Advocate, Nikesh Kumar and S.K. Roy,
Advocates, for the Appellant; Kaushik Sarkhel, A.P.P., B.M. Tripathi, Sr. Advocate
and Indrajit Sinha, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dhirubhai Naranbhai Patel, J.—1. This petition has been preferred for quashing of the First Information Report (FIR) bearing Doranda P.S. Case No. 623 of 2015 dated 20th October, 2015 registered under Section 386/387/420/269 and under Section 304 A of I.P.C. (This section 304 A has been added vide order dated 23rd October, 2015 by the order passed by the learned SDJM, Ranchi), for quashing of the Order dated 29th October, 2015 passed by the learned Sub Divisional Judicial Magistrate, Ranchi issuing warrant of arrest under Section 73 Cr.P.C. as well as for quashing of the Process under Section 82 of the Code of Criminal Procedure issued by the Sub Divisional Judicial Magistrate, Ranchi dated 23rd November, 2015, which was pasted on the premises of this petitioner on 26th November, 2015.

Factual Matrix

2. Informant Shri Ashwini Kumar has stated in his complaint before the Officer-in-Charge, Doranda Police Station that his wife Dr. Nivedita has given birth to a female child in Laxmi Nursing Home, Hinu, Ranchi on 15th October, 2015 at 3.21 P.M. through operation by Dr. Laxmi Choudhary. Dr. Laxmi Choudhary declared the child to be healthy at the time of birth. Thereafter, at about 11 p.m. on the same day, the child became a bit sick. Dr. Laxmi Chowdhary was informed and the Doctor called another doctor, who is the present petitioner-Dr. Rakesh Kumar. Dr. Rakesh Kumar conveyed that the child should be admitted to his hospital "Vatsalya Shishu Grih". Thereafter, the child was admitted to "Vatsalya Shishu Grih" owned by Dr. Rakesh Kumar. It further appears from the complaint that Rs. 20,000/- was directed to be deposited by Dr. Rakesh Kumar as thereafter only treatment will be started. As per the complaint, Rs. 10,000/- was deposited, but, the petitioner-Dr. Rakesh Kumar refused to treat the baby. Again it is conveyed that unless Rs. 20,000/- was deposited the treatment will not be started. It has been further stated by the informant that after a lot of persuasion Dr. Rakesh Kumar was ready to treat the new born baby after payment of Rs. 10,000/-, but, already much time was wasted. Thereafter, every day money was demanded by the petitioner-Dr. Rakesh Kumar and informant was constantly told that the health of the child was improving. Thereafter, on 19th October, 2015 at 8 p.m. Rs. 10,000/- was demanded, which was deposited by 10 p.m. and thereafter, at night (12 a.m.) it was informed by Dr. Rakesh Kumar that treatment of the new born baby was not possible and she may be shifted to "Rani Children Hospital". It has been stated by the informant further that when they asked for the papers relating to treatment, Dr. Rakesh Kumar refused to give the same, unless Rs. 15,000/- is being paid and thereafter, the baby was admitted to "Rani Children Hospital", where she expired.

3. Golden thread running throughout the complaint is to the effect that Dr. Rakesh Kumar was cheating and extorting money by putting a person in fear of death or in the fear of grievous hurt and dishonestly inducing a person to deliver the amount and was negligent enough not to give timely treatment to the new born baby unless the amount asked by him is paid by the informant and thereby has caused death of the new born baby by negligence. This has resulted into several offences under the I.P.C. especially under Section 386/387/420/269 and 304 A of the I.P.C. Section 304 A was added by the order of the Sub Divisional Judicial Magistrate, Ranchi vide order dated 23rd October, 2015. F.I.R. was registered at Doranda Police Station, Doranda on 20th October, 2015 and on 23rd October, 2015 when police reached at the residence of this petitioner he was not available. Again on 26th October, 2015 police has gone to the residence of this applicant, but, he was not available. Thereafter, on 29th October, 2015 again the police went to the residence of this applicant for investigation, but, he was not available. Necessary notice was also issued under section 41A(1) of the Code of Criminal Procedure on 22nd October, 2015 and ultimately, an order was passed by the competent trial court under Section 73 of Cr.P.C. on 29th October, 2015, issuing warrant of arrest. It further appears that police had reached at the

residence of this applicant again on 29th October, 2015 at 22:10 hours, but, Dr. Rakesh Kumar was not available. Thus, warrant of arrest could not be executed upon him which was issued by a competent trial court. It further appears that again on 4.11.2015 the Investigating Officer had gone to the residence of Dr. Rakesh Kumar and he was not available. This process was repeated on 17.11.2015 and Dr. Rakesh was not traceable and ultimately on 23rd November, 2015 order was passed by Sub Divisional Judicial Magistrate, Ranchi under Section 82 of the Code of Criminal Procedure declaring this applicant as an absconding accused.

4. Thereafter, this invisible Doctor has preferred Transfer Petition before Hon''ble the Supreme Court being T.P.(Cr.) No. 482 of 2015, which was withdrawn on 27th November, 2015. After withdrawal of this Transfer Petition from Hon''ble the Supreme Court, Revision was preferred before the Judicial Commissioner, Ranchi bearing Criminal Revision No. 269 of 2015 and the same was withdrawn on 1st December, 2015 and thereafter this Criminal Miscellaneous Petition, bearing No. 2391 of 2015 has been preferred for quashing of the F.I.R. as well as for quashing of Order dated 29th October, 2015 under section 73 of the Cr.P.C. as also for quashing of order dated 23rd November, 2015 passed by the S.D.J.M., Ranchi, wherein Process u/s. 82 of Cr.P.C. was passed and the same was pasted on the premises of the petitioner on 26th November, 2015.

Arguments canvassed by counsel for the petitioner

5. Shri Krishna Gopal Sharma, Sr. Advocate, submitted that there is no negligence on the part of Dr. Rakesh Kumar in giving proper treatment to the new born baby. Several Annexures annexed with this petition, especially Annexure 2 and 3, suggest that correct treatment was provided and all the tests were carried out and the baby was treated as per standard medical protocol. Dr. Rakesh Kumar has never stated that unless the money is paid, the treatment will not start. Counsel appearing for the petitioner has also relied upon Annexures 8,9,10 and 11 series annexed with the second supplementary affidavit filed by this petitioner.

6. Counsel for the petitioner has also relied upon following decisions rendered by the Hon''ble Supreme Court:

"(a) State of Haryana v. Bhajan Lal reported in , 1992 Supp(1) SCC 335

(b) Dhananjay alias Dhananjay Kumar Singh v. State of Bihar and Another reported in , (2007) 14 SCC 768.

(c) Jacob Mathew v. State of Punjab and Another reported in , (2005) 6 SCC page 1

(d) Kusum Sharma and Others v. Batra Hospital and Medical Research Centre and Others reported in , (2010)3 SCC 480

(e) A.S.V. Narayanan Rao v. Ratnamala and Another reported in , (2013) 10 SCC

741 and

(f) Lalita Kumari v. Government of Uttar Pradesh and Others reported in , (2014) 2 SCC page 1

(g) Decision rendered by Hon"ble the Supreme Court in Civil Appeal No. 3541 of 2002 on 17th February, 2009."

In view of the aforesaid decisions, it has been submitted that before registering the F.I.R., medical opinion ought to have been obtained by the Police. No such report has been obtained and the ingredients of Section 386/387/420/269 and 304 A I.P.C. are absent and hence the FIR registered at Doranda Police Station being Doranda P.S. Case No. 623 of 2015 dated 20th October, 2015 deserves to be quashed and set aside and therefore, consequent orders passed by the SDJM, Ranchi under Section 73 Cr.P.C. dated 29th October, 2015 and Order passed under Section 82 of the Cr.P.C. dated 23rd November, 2015 also deserve to be quashed and set aside.

7. Counsel for the petitioner has also relied upon a decision rendered by this court in W.P.(Cr.) No. 420 of 2015 dated 29th September, 2015 and has submitted that if any order under Section 82 of the Cr.P.C. is passed in haste, the same should be quashed.

Arguments canvassed by the counsel for the State-A.P.P.

8. The A.P.P. has vehemently submitted that looking to the complaint filed by the informant, it appears that the informant has stated in detail as to how consistently this petitioner-Dr. Rakesh Kumar was demanding money and he was conveying that treatment would be given to the new born baby only after payment of the money demanded. The money was extorted by Dr. Rakesh Kumar by putting a person in fear of death or grievous hurt. Counsel appearing for the State has narrated in detail how the ingredients of all the Sections of I.P.C. stated hereinabove are present. It is further submitted by the A.P.P. that Dr. Rakesh Kumar was not traceable or available for investigation when the police reached at his residence on 22nd October, 2015. Again on 26th October, 2015 this applicant was not available at his residence. On 29th October, 2015 again he was not traceable. Necessary notice under Section 41A(1) of Cr.P.C. was given on 22nd October, 2015 and ultimately, warrant of arrest was issued by the competent trial court under Section 73 of the Cr.P.C. on 29th October, 2015. Even thereafter, this Doctor was not available on 4.11.2015 and 17.11.2015 and ultimately an order was passed on 23rd November, 2015 by the competent trial court under Section 82 Cr.P.C. declaring him an absconding accused. Thus, Dr. Rakesh Kumar is not available for the investigation and he is also not available to the court and therefore, he was declared an absconding accused.

9. Counsel appearing for the State has further submitted that let the investigation be carried out by the police and let there be cooperation in the investigation by this petitioner. The A.P.P. has also relied upon the decision

rendered by Hon"ble the Supreme Court in Dhananjay alias Dhananjay Kumar Singh v. State of Bihar and Another reported in , (2007) 14 SCC 768, especially paragraph No. 6 thereof and upon another paragraph of the said decision. It is also submitted by the A.P.P that several documents which are annexed with the memo of this Criminal Misc. Petition and the supplementary affidavits are the documents which are not in lawful custody of this petitioner. It is submitted by the A.P.P. that if we look at the Annexures to the affidavits filed by this petitioner in this quashing matter, it would be clear that the said documents have been obtained by this applicant unauthorisedly or by committing theft. Thus, it is apparent that this petitioner is watching the investigation closely by remaining invisible to the investigating agency and further he has no respect either for the investigation or for the justice delivery system or for the Constitutional authorities or institutions. It is a fundamental duty of every citizen under Article 51-A (a) of the Constitution of India to respect the constitutional authorities and institutions. It is further submitted by the A.P.P. that in this case not only the negligence of the doctor has been pointed out, but, looking to the complaint, a tendency of extortion of money on the part of the absconding accused has also been pointed out, which, when coupled with the negligence, has resulted into the death of the new born baby.

It has been submitted by the learned A.P.P. that let there be a complete investigation and the F.I.R. may not be quashed by this court at the very threshold.

Arguments canvassed by counsel appearing for Respondent No. 2:

10. Counsel appearing for Respondent No. 2 has adopted the arguments of the learned A.P.P. and further submitted that the F.I.R. has revealed prima-facie offences under Sections 386/387/420/269 and 304 A of the I.P.C. Counsel appearing for Respondent No. 2 has pointed out in detail about the presence of ingredients of the aforesaid Sections of the I.P.C. it is further submitted by the counsel appearing for Respondent No. 2 that time and again investigating agency has tried to approach this petitioner, but, he was not traceable. Under Section 41 A (1) of the Cr.P.C. notice was also issued on 22nd October, 2015, but, Dr. Rakesh Kumar was not available and ultimately warrant of arrest was issued under Section 73 Cr.P.C. on 29th October, 2015 by a competent court. Thereafter also he was not available and ultimately on 23rd November, 2015 an order was passed under Section 82 Cr.P.C. declaring him an absconding accused. Counsel appearing for Respondent No. 2 has relied upon a decision rendered by Hon"ble the Supreme Court in State of Karnataka and Another v. Pastor P. Raju reported in , (2006) 6 SCC 728, especially para 15 and 16 thereof. On the basis of the aforesaid decision, it is submitted by counsel for Respondent No. 2 that the F.I.R. may not be quashed at this stage and let the investigation be carried out. Counsel appearing for Respondent No. 2 has also submitted that several documents have been placed on record by this absconding accused-petitioner which are not in authorised custody of this petitioner and an explanation is

needed as to how these documents (which are at Annexure 4 to the memo of the Criminal Misc. Petition and at Annexure 10 and 11 series to the 2nd supplementary affidavit filed by this petitioner on 17.12.2015) came into possession of the petitioner. These documents were never addressed to this petitioner and, therefore, it is apparent that either by theft or by unlawful means, these documents have been unauthorisedly obtained by this petitioner. Only those documents which are part and parcel of investigation record, can be relied upon by the court. Documents which are in the pocket of absconding accused and which are never given by police, cannot be relied upon by the court for quashing of the F.I.R. Even looking to these documents, nothing is in favour of Dr. Rakesh Kumar and, therefore, this F.I.R., Order dated 29th October, 2015 under Section 73 of the Cr.P.C. and the order dated 23rd November, 2015 passed by the S.D.J.M., Ranchi, which is an order under Section 82 of the Cr.P.C. may not be quashed and hence, this Criminal Miscellaneous Petition may not be entertained by this court.

REASONS

11. Having heard counsel appearing for both sides and looking to the facts and circumstances of the case, this Criminal Misc. Petition is, hereby, dismissed mainly for the following facts and reasons:

"(I) A complaint was lodged by Shri Ashwini Kumar at Doranda Police Station, which was registered as Doranda P.S. Case No. 623 of 2015 dated 20th October, 2015 under Section 386/387/420/269 of the I.P.C. and Section 304 A I.P.C. (Section 304 A I.P.C. was added vide order dated 23rd October, 2015 passed by the S.D.J.M., Ranchi).

(II) Looking to the complaint filed by the informant-Ashwini Kumar, it appears that Dr. Rakesh Kumar-petitioner has prima-facie extorted money by putting a person in fear of death or grievous hurt. Since the investigation is still going on, this court is not going in much detail as to how the ingredients of aforesaid sections of I.P.C. are present, but, suffice it to say that apart from medical negligence on the part of Dr. Rakesh Kumar, looking to the complaint, it appears that he has tried to commit extortion by putting a person in fear of death or grievous hurt. The allegation is that Dr. Rakesh Kumar had conveyed that unless the money was deposited, treatment would not be started. Even when complainant wanted to shift the new born baby to another hospital, Dr. Rakesh Kumar-petitioner refused to give medical papers to the complainant, unless Rs. 15,000/- is paid to him. Much time was wasted during treatment of the new born baby and ultimately the baby expired.

(III) After the FIR was registered at Doranda Police Station, being Doranda P.S. Case No. 623 of 2015 on 20th October, 2015, Dr. Rakesh Kumar-petitioner was not traceable at his residence. On following dates the Investigating officer went to the residence of Dr. Rakesh Kumar:

(a) 23rd October, 2015

- (b) 26th October, 2015
- (c) 29th October, 2015
- (Twice on the very same date)
- (d) 4th November, 2015
- (e) 17th November, 2015 and
- (f) 26th November, 2015

Thus, on the aforesaid dates Dr. Rakesh Kumar was neither traceable nor available for investigation. This is the cooperation rendered by Dr. Rakesh Kumar.

It further appears from the facts of the case that a notice under Section 41 A (1) of the Cr.P.C. was issued on 22nd October, 2015 to this petitioner, but, Dr. Rakesh Kumar never remained present before the Investigating Officer. Receipt of this notice was also refused by the wife of this petitioner, which has been highlighted in the order dated 23rd November, 2015 of the S.D.J.M., Ranchi. It further appears from the facts of the case that thereafter, upon an application preferred by the Investigating Officer, Sub Divisional Judicial Magistrate, Ranchi has passed an order dated 29th October, 2015 under Section 73 Cr.P.C., which is warrant of arrest against this petitioner and therefore, police had gone again at 22:10 hours on the same day to execute the warrant of arrest. At that time also Dr. Rakesh Kumar was not traceable or available and ultimately the Sub-Divisional Judicial Magistrate, Ranchi, on 23rd November, 2015 passed an order under Section 82 of Cr.P.C., declaring this petitioner an absconding accused. The said order is at Annexure 6/1 to the memo of the Criminal Misc. Petition, which is also under challenge. No illegality has been committed by the S.D.J.M., Ranchi while passing the order dated 23rd November, 2015 under Section 82 Cr.P.C.. Initially notice was issued under Section 41A(1) and thereafter, by a competent trial court, warrant of arrest was issued under Section 73 of Cr.P.C. on 29th October, 2015, which also could not be executed as this petitioner was unavailable and therefore, an order under Section 82 Cr.P.C. was passed by the competent trial court on 23rd November, 2015, declaring him an absconding accused. Looking to the said orders and relating them to the facts of the case, it appears that no illegality has been committed by the Sub Divisional Judicial Magistrate, Ranchi in passing an order under Section 82 of the Cr.P.C.

It further appears that this Dr. Rakesh Kumar continuously remained absconding. He is neither available to the investigating agency nor to the court. Thus, Dr. Rakesh Kumar-petitioner has no respect, either for the justice delivery system or for the constitutional machineries or institutions. Thus, there is a breach of fundamental duties by the petitioner, as envisaged under Article 51 A (a) of the Constitution of India.

(IV) This invisible, unavailable and absconding Dr. Rakesh Kumar has also annexed several documents, which are not in his lawful custody. These

documents are as under:

- (a) Annexure 4 to the memo of this Criminal Miscellaneous Petition.
- (b) Annexure 10 to the 2nd Supplementary Affidavit dated 17.12.2015;
- (c) Annexure 11-Series annexed with the 2nd supplementary affidavit dated 17.12.2015 (This annexure contains four different type of documents including investigation report)

All these documents are not in lawful custody of this petitioner. When this court asked this question to Mr. Krishna Gopal Sharma, counsel appearing for the petitioner, he is unable to point out anything about authorised custody of these documents with the petitioner. It appears that these documents were obtained unauthorisedly or by committing theft.

Thus, this invisible doctor Rakesh Kumar has remained away from the investigating agency as well as from the court, but, it is apparent that he is watching the investigation and other proceedings very closely. This is the tendency of this non-cooperative petitioner. When this court asked specific questions to the counsel for the petitioner as to where is the absconding petitioner at present, he is unable to give any answer, regarding whereabouts of the petitioner.

(V) It has been held by the Hon''ble Supreme Court in Vinod Raghuvanshi v. Ajay Arora & Ors. reported in , 2013(10) SCC 581 in paragraph Nos. 30 and 31 as under:

"30. It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a still born child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 Cr.P.C.. So, the order passed even by the High Court or this Court is subject to the order which would be passed by the trial court at a later stage.

31. In view of the above, we do not see any cogent reason to interfere with the impugned complaint or orders impugned herein. The appeal is devoid of any merit and is accordingly dismissed."

(Emphasis supplied)

In view of the aforesaid decision, the court should not quash the F.I.R. as a matter of rule, especially when the ingredients of the offence as alleged are present. The court is not to embark upon an inquiry, whether there will be conviction or acquittal. The court cannot also look upon the Annexures annexed by the accused especially of a non-cooperating and absconding accused like this petitioner. Only the documents which are coming from police and APP, are to be relied upon. At this stage we are not concerned with the fine niceties of the defence of this petitioner from the Annexures of this Cr. Misc. Petition.

(VI) It has been held by the Hon''ble Supreme Court in Amit Kapoor v. Ramesh Chander reported in , (2012) 9 SCC 460 in paragraph Nos.

27 and 27.1, 27.3, 27.6, 27.9, 27.12, 27.13 and 27.16 as under:

"27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts would exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1 Though there are no limits or the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.3 The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.6 The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.9 Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.12 In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was

possibility of his acquittal. The Court has to consider the record and documents annexed therewith.

27.13 Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima-facie.

27.16 These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

(Emphasis supplied)

In view of the aforesaid decisions, when the offence is broadly satisfied, the court should be more inclined to permit the continuity of the prosecution than its quashing at an initial stage. Even if one or two ingredients of the offence are not satisfied then also, the F.I.R. cannot be quashed. In the facts of the present case, after looking to the FIR, it appears that requirements of the offence are substantially complied with.

Counsel for both sides argued out at length, but, as the investigation is pending, this court is not analysing in detail the facts of the case. Suffice it to say at this stage that ingredients of aforesaid sections of I.P.C. are present and therefore, F.I.R. cannot be quashed. (VII) So far as quashing of the Order dated 23rd November, 2015 passed by the Sub-Divisional Judicial Magistrate is concerned and also quashing of the order dated 29th November, 2015 is concerned, this court has no reason to quash these two orders for the following reasons:

(a) Earlier Notice under Section 41 A(1) of Cr.P.C. was issued by police on 22nd October, 2015 which was not complied with and Dr. Rakesh Kumar has remained away from investigating agency.

(b) Thereafter warrant of arrest was issued by trial court u/s. 73 of Cr.P.C. on 29th October, 2015, which could not be executed upon him and therefore,

(c) an order under Section 82 was passed by the S.D.J.M. Ranchi declaring Dr. Rakesh Kumar as an absconding accused vide order dated 23rd November, 2015.

Thus, no illegality has been committed by the Sub-Divisional Judicial Magistrate, Ranchi in issuing warrant of arrest under Section 73 of the Cr.P.C. dated 29th October, 2015 and in issuing an order under Section 82 Cr.P.C. on 23rd

November, 2015 as this petitioner was constantly, from the very beginning, avoiding investigation by remaining untraceable, unavailable and by remaining absconding.

(VIII) Counsel for the petitioner has relied upon several decisions. None of them are helpful mainly for the following reasons

(a) Fine dissection of the facts and the enquiry of all the ingredients of the offences alleged by the prosecution is not required to be established at this stage.

(b) There may be possibility of absence of one or two ingredients of the offences, but, that does not mean that the FIR has to be quashed in exercise of power under Section 482 of the Cr.P.C., especially looking to the decision of the Hon''ble Supreme Court rendered in Amit Kapoor v. Ramesh Chander reported in , (2012) 9 SCC 460, especially looking to paragraph 27.13 and 27.16 thereof.

(c) Quashing of the FIR is an exception and such power should be exercised sparingly and with circumspection and that too in the rarest of rare cases

Looking to the facts of the present case, as stated hereinabove, ingredients of the offence as alleged by the prosecution are present. Broadly the offences have been satisfied. Consistently, there was extortion of money by this petitioner by putting a person in fear of death or grievous hurt coupled with a negligent act which might have resulted in the spreading of infection and ultimately into death of the new born baby.

In these circumstances, F.I.R. cannot be quashed, otherwise it will tantamount to "Kill a still born child". The prosecution should not be stifled unless there are compelling circumstances to do so. Investigation cannot be quashed at the threshold if the allegation has any substance as held by Hon''ble the Supreme Court in Vinod Raghuvanshi v. Ajay Arora & Ors. reported in , 2013(10) SCC 581 in paragraph Nos. 30 and 31.

(d) Dr. Rakesh is an absconding accused and is not traceable or available to the Investigating Officer on 23rd October, 2015, 26th October, 2015, 29th October, 2015 (Twice), 4th November, 2015, 17th November, 2015 and 26th November, 2015. This non-cooperative petitioner, who has no respect either for investigation or for justice delivery system, is seeking quashing of the F.I.R., quashing of warrant of arrest issued under Section 73 of the Cr.P.C. and quashing of Notice under Section 82 of the Cr.P.C. issued by a competent trial court. No illegality has been committed by the Sub-Divisional Judicial Magistrate, Ranchi while passing orders dated 29th October, 2015 under Section 73 Cr.P.C. and the Order dated 23rd November, 2015 under Section 82 of the Cr.P.C.

(e) Several documents have been annexed by this petitioner which have been obtained unauthorisedly or by committing theft, or by unlawful means, custody of which could not be even explained by the counsel for the petitioner when this court raised the question.

These facts make the present case different, from the facts of the cases cited by the counsel for the petitioner and hence all those judgments are not helpful to the petitioner.

(IX) Counsel for the petitioner has also submitted that hurriedly the warrant of arrest under Section 73 Cr.P.C. and Process under Section 82 of the Cr.P.C. has been issued by the court.

I am not accepting this contention mainly for the reason that the petitioner was evading his arrest as such, warrant of arrest under Section 73 Cr.P.C. is to be issued and if this warrant of arrest is not executed, there is bound to be an order under Section 82 Cr.P.C. It is the wish of every accused that the Investigating Officer should be lethargic, but that cannot be the reason for quashing of warrant of arrest under Section 73 Cr.P.C. and Process under Section 82 Cr.P.C. issued by a competent trial court.

12. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, there is no substance in this Criminal Misc. Petition preferred for quashing of the FIR bearing Doranda P.S. Case No. 623 of 2015, Order dated 29th October, 2015 issuing warrant of arrest under Section 73 Cr.P.C. and Process under section 82 Cr.P.C passed by a competent court on 23rd November, 2015.

13. Hence, this Criminal Miscellaneous Petition is, accordingly, dismissed.

I.A. No. 6799 of 2015

14. In view of the final order passed in this Criminal Miscellaneous Petition, this Interlocutory Application is, hereby, dismissed.