

Abdul Aziz Vs. State of Bihar

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Court : Patna

Decided On : May-15-2006

Judge : Rekha Kumari, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; Indian panel Code - Sections 34, 302 and 392

Appeal No. : Criminal Misc. No. 2810 of 2005

Appellant : Abdul Aziz

Respondent : State of Bihar

Disposition : Application rejected

Prior history : Rekha Kumari, J. 1. This is an application filed under Section 482 of the Code of Criminal procedure, 1973 (hereinafter referred to as the Code) for quashing the order dated 10.8.2004 passed by the Chief judicial Magistrate, West Champaran at Bettiah in Majhaulia P.S. Case No. 167/2004 by Which he has taken cognizance of the offence under Sections 392 and 302/34 of the Indian panel Code against the petitioner. 2. Heard. 3. It appears that on the date of occurrence at about 8.45 p.m. during pa

Judgement :

Rekha Kumari, J.

1. This is an application filed under Section 482 of the Code of Criminal procedure, 1973 (hereinafter referred to as the Code) for quashing the order dated 10.8.2004 passed by the Chief judicial Magistrate, West Champaran at Bettiah in Majhauria P.S. Case No. 167/2004 by Which he has taken cognizance of the offence under Sections 392 and 302/34 of the Indian Penal Code against the petitioner.

2. Heard.

3. It appears that on the date of occurrence at about 8.45 p.m. during patrolling the informant chowkidar Ravindra Yadav learnt that a person was lying injured near village Amwa on Dehaulia- Sugauli Road. He went there and saw the man injured. He disclosed his name as Surendra Singh and further informed that he was returning to Raxaul from Bettiah on Hero Honda Motor cycle, when 2-3 persons surrounded him and assaulted him with sharp weapons and fled away with his motorcycle. The injured was then taken to Bettiah Hospital where he was declared dead.

4. The F.I.R. was registered on the statement of the Chowkidar against unknown. The police investigated the case and submitted final report. The learned Magistrate, however, on perusal of the case diary found sufficient material to proceed against the petitioner. He, accordingly, by the impugned order took cognizance against the petitioner.

5. Learned Counsel for the petitioner submitted that the deceased was alive when the informant met him. The petitioner was known to the deceased. Therefore, if the petitioner had any hand in the crime the deceased must have told about it to the informant but the F.I.R. does not show that the deceased had stated any thing about the involvement of the petitioner. He also submitted that the case diary would show that the deceased had no motor cycle and he was suffering from night blindness and he could not drive any motorcycle during night.

6. There cannot be any dispute that the learned Magistrate can differ with the police report and take cognizance on the basis of the materials collected during investigation though the I.O. has submitted final report. In this case also, though there is no eye witness to the occurrence, the learned Magistrate has referred to

several paragraphs of the case diary wherein it is mentioned that the deceased was an Agent of L.I.C. and had deposited money on behalf of the petitioner and demanded the same and as the petitioner was not paying the money, there developed bitterness between the two, and at times there was quarrel between them. On the basis of the facts mentioned in those paragraphs the learned Magistrate found a prima facie case under Sections 392 and 302/34 of the Indian Penal Code against the petitioner and passed the impugned order.

7. It is also well settled that at this stage the Magistrate is required only to see whether there is a prima facie case against the accused to proceed against him. It is not to be seen at this stage whether the materials are sufficient for conviction of the accused.

8. Therefore, though there is no eye witness to the occurrence as there are some circumstances, against the petitioner for his involvement, it would not be proper for this Court to interfere with the impugned order.

9. In the result, I do not find any merit in this application. This application is thus, rejected. The petitioner, however, is at liberty to raise the above points at the time of framing of charge in the trial court.

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