

State vs. Vivek

Present: Sh. RS Jossan, APP for State.
Complainant in person.

ORDER

Complaint has come present. Statement of complainant Sandeep Kumar recorded and he stated that he is not agree with the cancellation report filed by the police before the court and he requested for taking action against the accused.

2. Heard on the cancellation report filed in the present case. Record perused. Brief facts of the story of the present case are that on 31.1.2015 ASI Sarwan Kumar along with other police officials was present at Bus Stand, Abohar in connection with patrolling duty then complainant Sandeep Kumar son of Vinod Kumar alongwith Mahavir got recorded his statement that he is resident of Abohar and he is having shop No. 45/46 at Jain Nagar Road, Abohar of Electronic scales and he is also doing the work of repair of the said scales at his said shop. A day before 31.1.2015 at about 9-9.15 AM he was cleaning his shop then five six persons with muffled faces entered into his shop and started to damage his shop with their respective weapons and due to the same the main door of his shop broken down as well as one LED of AOC and LCD of Panasonic were also broken and they also damaged his shop. Thereafter, he raised rola and all the said persons fled away from the spot with their respective weapons and they also threatened to kill him. He identified the voice one of them while running which was of Sumra son of unknown and his knife also fell down there. He identifies Sumra from his voice on the basis that on 26.12.2014 Vivek @ Mannu Godara son of Surinder Kumar Godara, resident of vicinity Near Loona Hospital, Abohar

along with three four persons came to his shop on a car bearing No. HR 26-8070 and threatened him. He is sure that either Vivek along with other persons or with the help of the accused persons entered into his shop and they damaged his shop. The motive behind the occurrence is that there is land dispute between his family and the family of Vivek and a talk of compromise was going on but the matter could not be compromised and complainant requested for taking action against the accused persons. The statement of complainant was sent to police station for registration of a case and ASI Sarwan Kumar conducted the initial investigation. During investigation, ASI Sarwan Kumar collected the call details of the suspected persons but nothing came on record against them. Thereafter, ASI Gurwinder Singh conducted the investigation and during investigation he found that Vivek is the son of maternal uncle of complainant Sandeep and maternal grand father of complainant has given the more share of his land to his daughter i.e. mother of complainant than father of Vivek, so there was a dispute of land between them. A Panchayat was also convened in this regard and in the Panchayat it was accorded that the land which was got transferred by the maternal grandfather of complainant in the name of mother of complainant, would be transferred in the name of father of Vivek but complainant Sandeep Kumar was not ready for the same and in order to not to get the matter compromised, he made the said concocted story. IO also recorded the statement of witnesses and from the statement of witnesses, the visit of Vivek Kumar to the shop of complainant was not proved. The complainant has got registered the present FIR only to pressurize his maternal uncle. Hence, the present cancellation report.

3. I have heard learned APP for State as well as complainant and

have gone through the case file very carefully and minutely and I am not agree with the cancellation report filed by the police as the police has not given any solid reason for filing the cancellation report in the present case. The police has mainly focused on accused Vivek but has not mentioned about the role played by accused Sumra and there is nothing mentioned about accused Sumra for giving him clean chit by the police when there were specific allegations of the complainant that he identified accused Sumra from his voice. Further, as regard accused Vivek then in that regard also the police failed to bring on record any appropriate document to show that Vivek was not present at the spot when the occurrence in question had taken place and had just given the clean chit to the accused on the basis of the fact that the complainant has concocted a story to falsely implicate Vivek in the present case as there was a property dispute between them. Further, the police has termed the present occurrence a trivial matter. However, this reasoning given by the police is having no logic in the light of the fact that substantial damage has been caused in the shop of the complainant as is clear from the photographs placed on record and further even two LEDs were damages and it cannot be believed that a person to falsely implicate the other person would cause a damage of around Rs. 1 lac to himself and the same cannot be termed as a small matter. Moreover, the motive is a double edged weapon, if the same can be used for falsely implicating the accused persons then, the same can also be used to cause damage to the complainant. Further, even the police has not mentioned in its report that as per the location of the mobile of accused Vivek at the time of the occurrence in question he was shown to be present somewhere else and even if that might have been shown even then the authenticity of the said location is subject to the scrutiny of the document

and the authenticity of the same can be established only after leading the evidence by the prosecution/accused persons. So, in the light of the above said discussion, it becomes that the police has given the clean chit to the accused persons merely on the basis of conjecture and surmises while there is sufficient material to proceed further against the accused persons namely Sumra and Vivek Kumar @ Mannu Godara for the offence punishable under Sections 452/427/506 read with Section 34 of IPC. So, accordingly the cognizance is taken in the cancellation report filed by the police accused namely Sumra and Vivek Kumar @ Mannu Godara are ordered to be summoned for the offences punishable under Sections 452/427/506 read with Section 34 of IPC for 31.8.2018. The present case be registered as police challan accordingly. IO of the present case is also directed to file the list of witnesses of the present case on the date fixed.

Pronounced.
Dated:30.05.2018
AMK Amit Kukkar, Steno II

(Amrish Kumar), PCS,
Sub Divisional Judicial Magistrate,
Abohar.UIDPB0293

Next date: 31.08.2018

Purpose: accused summoned.