

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.37 of 2014

Arising Out of PS.Case No. -144 Year- 2008 Thana –Amarpur (Fullidumar) District- BANKA

1. Nanhki Devi W/O Late Girish Manjhi Resident Of Village- Ghuthiyara, Police Station- Fullidumar, District- Banka.

.... Petitioner/s

Versus

1. The State Of Bihar

2. Manoj Azad Mukhiya, S/O Late Tarni Singh Resident Of Village- Naraun, Police Station- Fullidumar, District- Banka.

3. Bina Singh S/O Late Tarni Singh Resident Of Village- Naraun, Police Station- Fullidumar, District- Banka.

4. Pravej Kumar S/O Bina Singh Resident Of Village- Naraun, Police Station- Fullidumar, District- Banka.

5. Ashish Kumar S/O Bina Singh Resident Of Village- Naraun, Police Station- Fullidumar, District- Banka.

6. Sintu Kumar S/O Bina Singh Resident Of Village- Naraun, Police Station- Fullidumar, District- Banka.

7. Nipsa Kumar S/O Mushu Singh Resident Of Village- Naraun, Police Station- Fullidumar, District- Banka.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Ajay Mukherjee, Adv.

For Respondents 2 to 7 : Mr. Ranjan Kumar Jha, Adv.

For the State : Mr. I. B. Pandey, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 30-01-2015

Heard learned counsel for the petitioner, learned counsel for the State as well as learned counsel appearing on behalf of respondent nos.2 to 7.

The petitioner of the instant case is the informant of Amarapur (Fullidumar) P.S.Case No. 144 of 2008 registered for the offences punishable under sections 147, 148, 149, 448, 302 of the

Indian Penal Code, section 27 of the Arms Act and section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. On conclusion of investigation, the police submitted final report as against opposite party nos.2 to 7.

Admittedly, the petitioner was not noticed by the court after receipt of police report. Learned Chief Judicial Magistrate, Banka has accepted the final report vide impugned order dated 15th July, 2010.

Learned counsel for the petitioner submits that the impugned order is bad in law as the petitioner was neither noticed nor heard before the acceptance of police report.

The short question which arises for consideration in the present writ petition is whether in a case where First Information Report is lodged and after completion of investigation initiated on the basis of First information Report the police submits a report that the accusation against some of the persons named in the First information Report is false, the Magistrate can accept the report and drop the proceeding without issuing notice to the first informant of a case.

The issue involved in the present case has already been settled by a three Judges Bench of the Hon'ble Supreme Court in Bhagwant Singh Vs. Commissioner of Police & Ors. [(1985)2 SCC 537]. Paragraph 4 of the said judgment reads as under :



“4. Now, when the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-section (2)(i) of S. 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things : (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under subsection (3) of S. 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses : (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the



First Information Report lodged by him is clearly recognised by the provisions contained in sub-sec. (2) of S. 154, sub-sec. (2) of S. 157 and sub-sec. (2)(ii) of Section .173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of S. 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-sec. (2)(i) of S. 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of S. 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the

opportunity of being heard at the time when the report is considered by the Magistrate.”

In view of the law laid down by the Hon’ble Supreme Court in case the Magistrate decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report forwarded under sub-section (2)(i) of Section 173 of the Code of Criminal Procedure.

Learned counsel appearing on behalf of opposite party nos.2 to 7 has contested the matter. He submits that initially the petitioner had preferred a revision application before this Court under sections 397 and 401 of the Code of Criminal Procedure against the impugned order dated 15th July, 2010, but a Bench of this Court vide order dated 27th November, 2013 allowed the revision application to be converted into a writ application. He has submitted that since the petitioner has the statutory remedy of revision, a writ petition would not lie before this Court. His further contention is that though section 397 of the Code of Criminal Procedure gives concurrent jurisdiction to the Sessions Judge as well as the High Court to entertain a revision application against any order passed by the Magistrate but only in



exceptional circumstances a revision can be directly preferred before this Court. Normally, a revision application against an order passed by a Magistrate has to be filed before the Sessions Judge. He has further submitted that though no notice was issued to the informant of the case but the informant was vigilant in the matter. Only a day prior to the filing of the police report, a protest petition was filed in the court of learned Chief Judicial Magistrate on behalf of the informant by her lawyer.

Having heard the parties, I find substance in the argument advanced on behalf of the petitioner. It is true that initially a revision application was filed by the petitioner and the said application was allowed to be converted into a writ petition by a Bench of this Court. The remedy under Article 226 being, in general, discretionary, this Court may refuse to grant it where alternative remedy exists. It is equally true that the petitioner had a statutory remedy in the present matter either under revision jurisdiction or in a proceeding under section 482 of the Code of Criminal Procedure. However, since the matter has already been allowed by this Court to be converted into a writ proceeding from criminal revision, in my view, at this stage, it would not be proper to refuse to adjudicate the issue on the ground of availability of alternative remedy. It is well settled that existence of an alternative remedy is not an absolute bar

to the relief under Article 226 of the Constitution. It is a circumstance which the Court has to take into consideration, in exercising its discretionary power under Article 226 of the Constitution in a particular case.

In view of the law laid down by the three-Judges Bench of the Hon'ble Supreme Court in Bhagwant Singh (Supra), the impugned order dated 15th July, 2010 passed by the learned Chief Judicial Magistrate, Banka in Amarpur (Fullidumar) P.S.Case No. 144 of 2008 cannot be sustained as far as opposite party nos. 2 to 7 are concerned. Accordingly, the aforesaid order dated 15th July, 2010 so far as it relates to opposite party nos. 2 to 7 is set aside.

Learned counsel for the petitioner submits that the informant would appear before the court of learned Chief Judicial Magistrate, Banka on 24th February, 2015. In that view of the matter, no fresh notice is required to be issued to the informant.

Learned Chief Judicial Magistrate, Banka is directed to hear the informant of the case on the police report submitted under section 173 of the Code of Criminal Procedure on 24th February, 2015 or on any other date fixed thereafter and pass appropriate orders in accordance with law.

It is made clear that I have not examined the case on merits. It would be open for the learned Chief Judicial Magistrate,

Banka to pass such order as he deems fit and proper in the facts and circumstances of the case, after hearing the informant.

With these observations, the writ petition is allowed.

Registry is directed to send back the lower court records forthwith.

(Ashwani Kumar Singh, J)

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