

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18322 of 2015

Arising Out of PS.Case No. -22 Year- 2011 Thana -BEUR District- PATNA

Laxmi Rai, son of Late Jugeshwar Rai, Resident of Village/Mohalla - Bishunpur
Pankadi, Patna - 800002; Police Station - Beur, District - Patna. Petitioner

Versus

The State of Bihar.

.... Opposite Party

Appearance :

For the Petitioner/s : Mr. Kameshwar Prasad Sinha, Advocate

For the Opposite Party/s : Mrs. Meena Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-05-2015

Heard Mr. Kameshwar Prasad Sinha, learned counsel
for the petitioner and Mrs. Meena Singh, learned A.P.P. for the
State.

2. By filing an application under Section 482 of the
Code of Criminal Procedure (for short “the Code”), the petitioner
has challenged the order dated 18th July, 2014 passed by the
learned *Ad hoc* Additional Sessions Judge-7th, Patna, in Sessions
Trial No. 1188/ 2011 / 7942 / 2014, arising out of Beur P.S. Case
No. 22 of 2011, whereby the learned Judge has rejected the two
applications dated 1.3.2014 and 5.7.2014 filed by the petitioner
for stay of further proceedings of trial.

3. The prosecution case is based on the fardbeyan of
one Upendra Kumar recorded by the S.H.O. Beur Police Station



on 23.01.2011 at Rajeshwar Hospital, Patna at 6.50 hours. The case of the prosecution, in brief, is that on 22.01.2011 at about 4.30 p.m., three persons, namely, Brajesh Kumar, Raj Kumar Rai and Satish Kumar Gupta @ Pappu opened fire following the order of the petitioner Laxmi Rai aiming at father of the informant namely, Dharmdeo Rai @ Mirchai Gope causing multiple injuries to him, as a result of which he fell down and was taken to the hospital for treatment. However, in course of treatment, he succumbed to the injuries sustained by him.

4. The FIR was initially registered for the offences punishable under Sections 307, 120-B read with 34 of the Indian Penal Code and section 27 of the Arms Act against the petitioner and his three sons, namely, Brajesh Kumar, Raj Kumar Rai and Satish Kumar @ Pappu. Subsequently, since the victim died, Section 302 of the Indian Penal Code was also added to the FIR.

5. On completion of investigation, the police submitted charge sheet for the offences punishable under Sections 302 and 120-B read with 34 of the Indian Penal Code against all the accused named in the FIR. On receipt of the police report submitted under Section 173(2) of the Code, the learned Chief Judicial Magistrate, Patna took cognizance of the offence punishable under Sections 302 and 120-B read with 34 of the Indian Penal Code and Section 27 of the Arms Act vide order



dated 04.07.2011 against the accused persons. The learned Chief Judicial Magistrate, thereafter, made over the case to the Court of Magistrate for the purposes of commitment. Thereafter, the learned Magistrate committed the case to the Court of Sessions for trial.

6. At the stage of framing of charge, the petitioner filed two applications, one on 01.03.2014 and the another on 05.07.2014 before the trial court for staying the further proceedings of the case, as the matter was being investigated further by the police under Section 173(8) of the Code. The aforesaid two applications filed on behalf of the petitioner was rejected by the learned *Ad hoc* Additional Sessions Judge-7th, Patna vide impugned order dated 18.07.2014.

7. Learned counsel for the petitioner has submitted that on 20th September, 2011, the Officer-in-charge of Beur Police Station had informed the learned Chief Judicial Magistrate that the matter is being investigated further in terms of Section 173(8) of the Code. According to him, since further investigation is going on, it would not be proper for the trial court to proceed with the matter, as after conclusion of further investigation, the police may exonerate the petitioner and other accused persons from the case. He further submitted that the investigation of criminal offences is

exclusively reserved for the police and if the court would proceed with trial of the case without awaiting for the further police report, the same would amount to interference with investigation, which is not permissible in law.

8. He has further submitted that the charge sheet submitted by the police does not depict true facts. The investigating officer of the case had not conducted the investigation in a fair and impartial manner and had deliberately filed the charge sheet in utter haste in order to misdirect the investigation of a case. He has urged that an incomplete charge sheet has been submitted before the Court pursuant to which the magistrate has taken cognizance of the offence against the petitioner and others. He has submitted that the power of the police to reopen investigation even after submission of charge sheet or commitment of the proceeding is recognized under Section 173(8) of the Code and if the ongoing further proceedings before the trial court is not stayed, the same would amount to miscarriage of justice and unfair trial.

9. Per contra, Mrs. Meena Singh, learned A.P.P. for the State has submitted that even if the further investigation is being conducted after submission of charge sheet, the ongoing trial of the case cannot be stayed. According to her, the petitioner



is named in the FIR and there is specific allegation that upon order of the petitioner three of his sons opened fire causing multiple injuries to the father of the informant, as a result of which, he succumbed in course of treatment in hospital. After thorough investigation, the investigating officer of the case has submitted charge sheet and even if the matter is being investigated further the trial of the sent up accused cannot be stayed.

10. I have heard the respective counsel for the parties at some length. The only question raised in the present application is as to whether the proceedings in the court of *Ad hoc* Additional Sessions Judge-7th, Patna, which commenced after the commitment proceeding are to be mandatorily stayed till the time, the investigating agency submits a further report in this case.

11. To answer this question, it will be necessary to refer to Section 173 of the Code, which so far as it is relevant for the present case, reads as under:-

“173. Report of police officer on completion of investigation -

(1) Every investigation under this Chapter shall be completed without unnecessary delay

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form

prescribed by the State Government, stating—

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given

(3) xxxxxx

(4) xxxxxx

(5) xxxxxx

(6) xxxxxx

(7) xxxxxx

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a



further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

12. From a perusal of Sub-section (1) of Section 173 of the Code, it would be evident that every investigation shall be completed without unnecessary delay. Sub-section (2) mandates that as soon as the investigation is completed, the officer Incharge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report in the form prescribed by the State Government. Sub-section (8) of Section 173 mandates that irrespective of the report under sub-section (2) forwarded to the Magistrate, if the officer-in-charge of the police station obtains further evidence, it is incumbent on his part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed. The above-said provision makes it clear that further investigation is permissible.

13. In **Rama Chaudhary vs. State of Bihar [(2009) 6 SCC 346]**, the Supreme Court, in para 17 and 18, held as under :-

“17. From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that



even after submission of the police report under sub-section (2) on completion of the investigation, the police has a right to “further” investigation under sub-section (8) of Section 173 but not “fresh investigation” or “reinvestigation”. The meaning of “further” is additional, more, or supplemental. “Further” investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether.

18. Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a “further” report and not a fresh report regarding the “further” evidence obtained during such investigation.”

14. In **Mithabhai Pashabhai Patel and others vs. State of Gujarat [(2009) 6 SCC 332]**, the Supreme Court has categorically held that though the police has right to further investigate but it has no right to fresh investigation or reinvestigation. In para 13, the Court held as under:-

“13. It is, however, beyond any cavil that “further investigation” and “reinvestigation” stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a “State” to get an

offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in *Ramchandran v. R. Udhayakumar* (2008) 5 SCC 413 opined as under: (SCC p. 415, para 7)

“7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but no fresh investigation or reinvestigation.”

A distinction, therefore, exists between a reinvestigation and further investigation.”

15. From the discussions made, hereinabove and the law laid down by the Supreme Court, it is evident that further investigation is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started *ab initio* after wiping out the earlier investigation altogether. It is a continuation of such investigation which culminates in a further police report under sub-section (8) of Section 173. If the further investigation would not wipe out the earlier investigation then no objection can be raised regarding ongoing proceedings of the trial court on the basis of such police report.



16. In the present case for taking cognizance of the offence, the learned Chief Judicial Magistrate has taken into account the allegations made in the first information report, the statement of the witnesses recorded by the police during investigation and the police report submitted under Section 173(2) of the Code. Any subsequent police report which may be filed by the investigating agency under Section 173(2) of the Code cannot wipe out an earlier police report and the cognizance taken by the Magistrate under Section 190(1)(b) of the Code.

17. The report submitted under Section 173(2) of the Code contained all the particulars prescribed by section 173(1) of the Code. Even otherwise, it is well settled that the Magistrate is not bound by the conclusions arrived at by the police.

18. Upon the facts contained in the police report, it is for the Magistrate to decide whether there are facts disclosed in the report which constitute an offence. While considering the report of the police, the Magistrate cannot be debarred from applying himself to the record of investigation and all materials forwarded to him by the police. If the Magistrate is satisfied upon perusing all materials forwarded to the Court, he would be well within his jurisdiction to take cognizance of the offence under Section 190(1)(b) of the Code. In no case, the Magistrate is bound

by the police report. He may agree with the police report or he may differ with the conclusion of the police. If the magistrate finds that the investigation is incomplete, he may even direct for further investigation in the case.

19. It is well settled that the police is master of investigation but once a report is led before the Magistrate, it is for the Magistrate to consider what treatment has to be given to the police report and pass appropriate orders in accordance with law.

20. Since the offences alleged were exclusively triable by the Court of Sessions, the learned Magistrate had committed the case to the Court of Sessions under Section 209 of the Code for trial in accordance with law. There has been no illegality either in investigation of the case or in taking cognizance of the offence or in committing the case to the Court of Sessions for trial. Under such circumstance, merely because the police is proceeding with the further investigation, the trial of the case cannot be stayed.

21. The contention of the learned counsel for the petitioner that if the court below proceeds with the trial, it would amount to an interference with the investigation of the case, has no force. There is no provision of law in the Code under which the trial court can stay the proceeding of a case in which cognizance

has been taken.

22. The alleged offence of murder had taken place in January, 2011 and the cognizance was taken by the learned Magistrate in July, 2011 after receipt of the charge sheet but charges have not been framed till date due to frivolous and misconceived petitions being filed by the accused persons before the trial Court. Apparently, such applications are being filed with a view to delay the trial.

23. For the reasons recorded, hereinabove, I find no merit in the present application. Accordingly, the application is dismissed.

24. The court below is directed to proceed with the trial expeditiously.

25. Registry is directed to send a copy of the order to the trial court forthwith.

(Ashwani Kumar Singh, J.)

Sanjeet/-

U		T	
---	--	---	--