

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46208 of 2014

Arising Out of PS.Case No. -443 Year- 2014 Thana -LAKHISARAI District- LAKHISARAI

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Anil Kumar Sharma @ Anil Sharma son of Sh. Madan Mohan Sharma, resident of
C 56/40, Sector 62, P.S. Sector 58, Noida (U.P.)

.... Petitioner/s

Versus

1. The State of Bihar
2. Usha Sharma w/o late Dr. Kumar Sharat Chandra, Balika Vidyapith Campus,
P.S. Lakhisarai, District Lakhisarai

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ravi Kumar, Advocate

For the Opposite Party/s : Mr. Kumar Virendra Narayan, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 24-09-2015

The Petitioner seeks quashing of the order of cognizance dated 31.10.2014 passed by the Chief Judicial Magistrate, Lakhisarai in Lakhisarai P.S. case No.443 of 2014.

The short facts of the case is that on 2.8.2014 at 7.45 A.M. the Informant instituted a case stating therein that on the same day at 6.15 A.M. her husband Dr. Sharad Chand was sitting on the verandah reading the newspaper. As soon as she turned to go inside the house she heard shots of gun fire. So she immediately came to the verandah and saw her husband having been shot on the temple as also saw a young boy with a pistol running out. There was another boy seated on a motorcycle. She had seen the boys clearly and was in a position to identify them. Her husband was immediately removed to

the clinic of Dr. Himkar, where he was declared dead.

The reason for the occurrence is that in August, 2009 the Petitioner along with others had captured the Trust of Balika Vidyapeeth and had forcibly removed her husband from the Trust, on account of which there were various litigations between them. She further stated that Dr. Pravin Kumar Sinha and Dr. Shyam Sundar Singh appropriated the accounts of the School and had acted in various manners, which was not in the interest of the Institution or her husband. Earlier also the accused had committed some anti- social activities so as to coerce her husband into disassociating himself from the Institution. She stated that the accused could go to any extent for the control of the Institution and hence she alleged that the accused persons in conspiracy with each other had got her husband murdered.

The Counsel for the Petitioner draws attention of this Court to the manner in which the Magistrate proceeded in the case. He points out that the order sheet dated 27.10.2014 reveals the Magistrate noticed that the investigation had been handed over to Sri Uday Prasad Singh, Dy. S.P., CID, Bihar, Patna. Later on the same day the Magistrate passed a detailed order noting that one Dr. Praveen Kumar Sinha was in judicial custody since 3.8.2014 and 90 days in terms of Section 167(2) Cr.P.C. was to expire on 1.11.2014. He then observed that since the Investigating Officer had changed it was highly unlikely



that the police report under Section 173(2) Cr.P.C. would be submitted within this period. He also noted that the earlier Investigating Officer had not submitted the case diary, the police report, etc despite which the Court had been remanding the accused to judicial custody. In such circumstances, he directed the previous Investigating Officer, who had investigated the case between 2.8.2014 to 23.10.2014 to submit the police report, case report and case diary. The Office was directed to accordingly sent communications to the S.P., the previous and present Investigating Officer and the D.G. Bihar as also Addl. A.D.G. Headquarters and A.D.G., CID.

On 31.10.2014 the Chief Judicial Magistrate, perused the charge sheet. He took note of the fact that two accused, both incidentally named Roshan Kumar, who had been arrested in the present case, were non F.I.R. accused persons. He then looked into the contents of the case diary and that in Paragraph 436 of case diary, the decision was to submit charge-sheet only against accused Dr. Praveen Kumar Sinha who was in judicial custody. He however opined, that, on looking into the contents of the case diary, a prima facie case was made out against all the accused named in the First Information Report and the two non F.I.R. accused and relying on the decision reported in A.I.R. 1968 page-117 of Abhinandan Jha and others versus Dinesh Mishra decided to proceed against all of them.



The Counsel for the Petitioner submits that the Magistrate by directing the Investigating Officer to submit the police report has interfered with investigation which he was not empowered to do and denied him the constitutional right to a fair investigation. He further submits that no doubt the Magistrate could summon the Petitioner but only in exercise of his powers under Section 319 Cr.P.C. for which proposition he relies on a decision reported in (2014)3 Supreme Court Cases 92, paragraph 43 (Hardeep Singh v. State of Punjab and others). The further submission is that all materials which transpired subsequently, including the confessional statements of two non F.I.R. accused, completely exonerated the complicity of the Petitioner which the Magistrate denied himself the opportunity of looking into.

On the other hand, the Counsel for the State submits that the Petitioner has been named in the First Information Report and there is a definite case of motive attributed to the accused persons. There are references of various litigations in the case diary which suggests this occurrence had taken place on account of a deep-rooted conspiracy. The deceased had filed a number of 'Sanhas' against the Petitioner and other accused persons named in the First Information Report before his death, admissible in evidence as dying declaration, which definitely points to their complicity. The



prosecution during investigation also produced copies of CD of an interview given by the deceased on the television wherein he had stated most categorically that he apprehended murder at the hands of the Petitioner and others. Other witnesses have also supported that there was active animosity between the deceased and the accused persons over control of the Trust and hence there was sufficient material in the case diary justifying the order of cognizance under Section 190 Cr.P.C. He further submits that since a Magistrate has the power to disagree with the Police Report the impugned order does not suffer from any infirmity.

In support, the Counsel for the Informant submits that even while he adopts the arguments of the APP, he was in a position to demonstrate that on 5.4.2012 the deceased had given an application that he apprehended danger to his life at the hands of the Petitioner and two years later the present occurrence had taken place.

In reply, the Counsel for the Petitioner once again reiterates that the Magistrate was not justified in intervening in the investigation even before the charge sheet was submitted. In doing so he has usurped the power of the investigation entrusted to the investigating Agency and deprived the Petitioner of a fair investigation.

To understand the problem posed in the present case, one

will have to look to the scheme of the Code of Criminal Procedure. We know Section 190 Cr.P.C. empowers a Magistrate to take cognizance under three events;

- i) on a complaint
- ii) on a police report
- iii) on information from any other source

When we examine the provision closely, we find the fundamental difference between the a Complaint and a police case is that while the Magistrate takes cognizance on a complaint as soon as he applies his mind to it and thereafter assumes power to decide his course of action in terms of Section 200, 202, 203, 204 Cr.P.C. in a police case he does so only on a police report. The word police report used in Section 190 Cr.P.C. should not be confused with police case which is a First Information Report. A police report is one which is commonly referred to as a Charge sheet submitted at the end of investigation in terms of Section 173 Cr.P.C. (which word, incidentally, though most frequently used in criminal practice, does not find mention in the entire Code). It is for this reason that in a police case all procedures followed by the Magistrate during investigation, such as remand, issuance of warrants, proclamation, attachment are only on an application of the Investigating agency. Such is the exclusive jurisdiction of the Police during investigation

that even statement of a witness cannot be recorded by the Magistrate under section 164 Crpc without an application of the Investigating Officer.

No doubt once the Police Report or the Charge sheet is submitted the Magistrate assumes full control of the case and can proceed in the manner he decides. At that stage he has absolute powers to agree or disagree as held in the case of Abhinandan Jha (AIR 1968 SC 117) also referred to by the Magistrate in the impugned order.

I would think that we have landed into this sometimes confusing situations like the present, when the Magistrate believes he can assume charge of all the accused even when part charge sheet against some accused is submitted, by looking into the contents of the case diary, is because the police has come into a habit of filing multiple police reports which the Code does not speak of.

However to test whether the Magistrate would be correct in taking such a step let us take a hypothetical situation. Suppose a First Information Report is filed against X and Y. As enjoined, the police forwards a copy of the FIR and, later, other entries of the case diary revealing some material against the two, as also noting that the investigation is going on, to the concerned Magistrate. Can the Magistrate on its basis take cognizance against X and Y by looking



into the contents of the documents? Evidently not. For the obvious reason that the investigation is going on in the case. Applying this logic the next deduction would be that when a part charge sheet is submitted only against X showing investigation pending against Y, a Magistrate cannot proceed against the non-charge-sheeted Y, and, will have to wait till charge-sheet is submitted as also against Y.

I do not wish to digress into discussing the steps a Magistrate can take for expediting or channeling the investigation since it is not germane to the issue posed in this case. I do not also wish to comment on the validity of the order of the Magistrate directing the Police to submit the police report since, despite such direction the Police did not do so as against the Petitioner, and, the order of cognizance remains independent of it, as also, the said order is not impugned here.

I must elaborate that there could be situations when, even though all materials against an accused have been collected, but the charge sheet states that the investigation is pending because the accused has not been arrested. Then the Magistrate would be justified in taking cognizance under Section 190 Cr.P.C. against him for the reason that the document so submitted is a police report in terms of Section 173 Cr.P.C. wherein sub section (2)(i)e incorporates the requirement of mentioning whether the accused has been arrested.

The aforesaid discussion leads me to the inevitable conclusion that the impugned order is not sustainable. Hence the order of cognizance dated 31.10.2014 passed by the Chief Judicial Magistrate, Lakhisarai in Lakhisarai P.S. case No.443 of 2014 as against the Petitioner and others similarly placed is hereby set aside.

However this Court must clarify that it has not applied its mind to the merits of the case and therefore it will be open to the Magistrate to proceed in accordance with law on submission of charge sheet as against the accused, and all judicial orders issued by him in accordance with prescribed procedure shall remain unaffected by this order.

(Anjana Prakash, J)

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