

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 30336 of 2012

Arising Out of PS.Case No. - 41 Year- 2010 Thana -Sikta District- Bettiah (W.Champaran)

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Dipu Pandey, son of late Bachcha Pandey, resident of village – Bhawra, Police Station – Balthar, District – West Champaran.

.... **Petitioner**

Versus

1. The State of Bihar
2. Amit Singh, Assistant Commandant, 27th Battalion, SSB, Narkatiaganj, West Champaran.

.... **Opposite Parties**

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Appearance :

For the Petitioner/s : Mr. B.K.Singh, Adv.

For the Opposite Party/s : Mr. N.A.Shamsi, ASG

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 04-02-2015

Heard learned counsel for the petitioner and Mr. N.A.

Shamsi, learned Assistant Solicitor General, who appears on behalf of information/opposite party no. 2.

The sole petitioner, invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 24-06-2011 passed by learned Chief Judicial Magistrate, West Champaran at Bettiah (hereinafter referred to as “Magistrate”) in Sikta P.S. Case No. 41 of 2010. By the said order, the learned Magistrate has taken cognizance of offence under Sections 413 & 414 of the Indian Penal Code and directed for issuance of summons for securing attendance of the accused.

Short fact of the case is that an F.I.R., vide Sikta P.S.



Case No. 41 of 2010 was registered on 14-05-2010 on the ground that a turtle trolley was found near the Indo-Nepal Border. The trolley was loaded with 74 bags of cement and 12 quintals of iron rod. It was suspected by the informant that the said articles were stolen one and the informant suspected the involvement of the petitioner and as such, an F.I.R. was lodged, in which, the petitioner was shown as named accused. However, during investigation, the accusation was not found true and as such, final report, vide Final Report No. 73 of 2010 dated 30-09-2010 was submitted in the court showing the case as mistake of fact and the petitioner was exonerated by the investigating agency. Meaning thereby that he was not forwarded to face trial.

Learned counsel for the petitioner submits that even after lodging F.I.R., subsequently, the trolley alongwith seized 74 bags cement and 12 quintals of iron rod were released in favour of the authorized person. It has been argued that though police submitted final report and exonerated the petitioner, the learned Magistrate, without assigning any reason, has passed order of cognizance. He further submits that even in case diary, no plausible material was brought on record showing involvement of the petitioner and as such, there was no occasion for the learned Magistrate to pass order, differing with the police report.

Besides hearing, I have also perused the materials

available on record, particularly; the impugned order i.e. order dated 24-06-2011. From **Annexure '2'** to the present petition i.e. final report, it is evident that the petitioner was not forwarded by the police to face trial. On perusal of the order impugned, it is evident that the learned Magistrate, though has passed the order of cognizance differing with the police report, he has not bothered to assign some reasons for differing with the police report. Once final report is submitted by the police, it may not be treated as waste paper. It is true that the learned Magistrate is competent to pass order of cognizance, differing with the police report, but in that event, it is mandatorily required to indicate brief fact of the case and reason for differing with the report.

On perusal of the order impugned, it is evident that no reason has been assigned. Accordingly, the Court has got no option but to set aside the impugned order.

Accordingly, the order dated 24-06-2011 passed by learned Chief Judicial Magistrate, West Champaran at Bettiah in Sikta P.S. Case No. 41 of 2010 is set aside.

The petition stands allowed.

(Rakesh Kumar, J.)

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