

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.862 of 2014

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1. Debjani Devi @ Debrani Devi, wife of late Kapildeo Singh, resident of village Maniyarchak, P.O. & P.S. Piri Bazar, district Lakhisarai
2. Bipin Singh (in jail), son of late Kampani Singh, resident of village Garhi Rampur, P.S. Naya Ram Nagar, district Munger Petitioners
- Versus
1. The State of Bihar Through Home Commissioner/principal Secretary, Govt. of Bihar, Patna
2. The Director General of Police, Bihar, Patna
3. The Additional Director General of Police, Criminal Investigation Department, Government of Bihar, Patna
4. The Principal Secretary, Vigilance Department, Government of Bihar, Patna
5. The Inspector General of Police, Munger Range
6. The Deputy Inspector of General of Police, Munger
7. The Superintendent of Police, Lakhisarai
8. The Dy.S.P., Lakhisarai
9. The Officer-in-Charge, Piri Bazar Police Station, Lakhisarai
10. Ram Ashraya Singh, son of late Triweni Singh, village Maniyar Chak, P.S. Piri Bazar, district Munger Respondents
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Appearance :

For the Petitioners : M/S Praveen Kumar & Ritu Raj Thakur, Advs.
For the Respondents : Mr. Kumar Alok, SC VIII with
Mr. Dr. Raj Kumar Singh, AC to SC VIII

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

7 13-05-2015 Heard the learned counsel for the petitioners and the State.

This writ petition has been filed commanding and directing the respondents to conduct prompt and fair investigation in respect of Piri Bazar P.S. Case No. 36 of 2014, dated 19.04.2014 in which the petitioner has been named as an accused under Sections 366 and 364/34 of the Penal Code as well as Piri Bazar P.S. Case No. 24 of 2014, dated 23.03.2014, in which the sons of the informant, namely, Raushan Kuma and Gulshan



Kumar, have been made as accused by petitioner no. 1. it is also for commanding the respondents to ensure the safe recovery of Raushan Kumar and also for commanding and directing the respondents to take proper and legal action against the guilty persons, who are found liable for false implication and for commanding and directing the respondents to entrust the investigation to any fair and competent investigating agency.

The prosecution case, as alleged in the first information report, is that the son of the informant, Raushan Kumar was missing, as on 11.04.2014 his son Raushan Kumar went to market to bring vegetables, but, did not return till night and, then, on enquiry, it was learnt that Debjani Devi, the wife of the brother of the informant, had quarrel and for which Piri Bazar P.S. Case No. 24 of 2014 was lodged and Raunak Kumar, the sister-in-law of Debjani Devi, had threatened that they will kidnap Raushan Kumar and on the date of kidnapping Raunak Kumar was at his sasural and using to visit the house of the informant, but, after missing of Raushan Kumar, Raunak Kumar not visiting the house and a doubt has been raised that the son of the informant has been kidnapped by Debjani Devi and Raunak Kumar. On the written report by Ramashray Singh, first information report was lodged bearing Piri Bazar P.S. Case No. 36 of 2014

dated 19.04.2014.

The learned counsel for the State has also filed a counter affidavit and also a supplementary counter affidavit and a reply has also been filed by the learned counsel for the petitioner.

It is not in dispute that in the case the charge sheet has already been submitted. Though as per the learned counsel for the State the charge sheet has been submitted on 31.07.2014 whereas a photo stat copy of the certified copy of the charge sheet has also been filed by the learned counsel for the petitioners, which shows that the charge sheet submitted and has been seen by the Subdivisional Judicial Magistrate, Lakhisarai, on 02.09.2014.

The learned counsel for the petitioner, however, challenged the charge sheet that whatever submitted in the charge sheet, it does not disclosed making out an offence under Section 365 of the Penal Code under which the charge sheet has been filed. It has also been submitted that from the evidence and the material placed in the charge sheet does not say that there is any eye witness to the occurrence and, further, whether the charge sheet submitted make out an offence or there is any evidence to support the prosecution case to enable the investigating officer to submit a charge sheet. It has, further, been submitted that the investigation by the investigating agency is neither fair nor



reasonable. It has, further, been submitted and reliance has been placed on a decision reported in **2008 CRI.L.J. (NOC) 1167 Cal (Mafuja Bibi @ Mafurjan Bibi Vrs. State of West Bengal and Anr.)** where the High Court of Calcutta in a proceeding under Section 482 of the Criminal Procedure Code for quashing of the charge sheet in a murder case held that statements of the witnesses were absolutely hear-say in nature and there was nothing against petitioner in it, no material against the petitioner in the case diary which may be foundation of filing charge sheet, under circumstances charge sheet against the petitioner liable to be quashed. Reliance has also been placed on a decision reported in **2008 CRI.L.J. (NOC) 185 Bombay (Maganlal Vrs. Central Bureau of Investigation, Nagpur)** where it has been held that at the stage of framing of charge or quashing of charge sheet, ultimate reliability of evidence, can not be considered too meticulously, what is to be seen at the stage whether prima facie any offence is made out on the basis charge sheet filed and relevant documents submitted along with it. However, the two decisions are contrary. More over, having required to the effect that the charge sheet is dated 31.07.2014. However, the in paragraph 4 of the supplementary counter affidavit it has been stated that the charge sheet has been submitted by



the investigating officer before the learned Court of the Subdivisional Judicial Magistrate, Lakhisarai, on 31.07.2014 under Section 365/34 of the Indian Penal Code. However, the petitioners have also not made any statement countered to this statement made in paragraph 4 of the supplementary counter affidavit. The learned counsel for the petitioners has also filed a photo copy of the certified copy of the charge sheet in which it has been pointed out that the said charge sheet has been seen by the In-Charge Subdivisional Judicial Magistrate, Lakhisarai, on 02.09.2014. However, there is no specific mention when the charge sheet was submitted though it has been shown to have been seen on 02.09.2014. However, it has been asserted that the this criminal writ petition has been filed on 28.08.2014, but, the records shows that the writ petition was filed and registered on 03.09.2014.

Be that as it may, the position is clear that the charge sheet has already been submitted before the trial Court. However, it is submitted that the charge sheet submitted is a charge sheet in conformity with Section 173 of the Criminal Procedure Code.

However, having regard to the fact that the first information report lodge and charge sheet submitted, but, the prayer of the petitioners is for direction to conduct prompt and fair investigation.

However, after the submission of the charge sheet the prayer for conducting of prompt and fair investigation lost its significance and after submission of charge sheet the Magistrate is required to look into the charge sheet and take cognizance. However, it is asserted that uptill date the cognizance has not been taken though a copy of the charge sheet has been filed which is apparent from the copy of charge sheet filed by the petitioners in the supplementary affidavit shows that the same has been seen by the In-Charge Subdivisional Judicial Magistrate, Lakhisarai, on 02.09.2014 itself. However, the learned counsel for the petitioners has submitted that the petitioners have been made accused for an offence for kidnapping Raushan Kumar though the charge sheet has been submitted, but, it is asserted that said Raushan Kumar has been kept concealing either at the residence of his father at Ranchi or at the place of his brother or at the place of some relatives in a well and organized manner for false implication. However, submission based on suspicion as no authentic report where the said Raushan Kumar is. It has, further, been submitted that though the charge sheet has been submitted in anticipation of approval by the superior officers or supervising officers though an observation has been made by the superior authorities that Raushan Kumar was



seen at Abhaypur Station lastly and none of his family members has established relation and has not come in connection with his relative and the place from where the kidnapping alleged is a Bazar, but, none has seen and so that the matter be required to be investigated properly. However, it is submitted that in defiance of the direction of the supervising officer the charge sheet has been submitted without proper investigation and the submission of the charge sheet be quashed. However, it is not in dispute that the charge sheet has not been submitted, as the charge sheet has been made Annexure "5" with an affidavit, dated 12.05.2015, amending the prayer for quashing the first information report and for quashing the police report submitted by the police and submission is that the said charge sheet has been seen by the In-Charge Subdivisional Judicial Magistrate, Lakhisarai, on 02.09.2014.

However, there is no prayer for quashing the first information report in writ petition. The learned counsel for the petitioners, during arguments, made submission for quashing the first information report. However, the ground for quashing the first information report is false implication, but, this Court, at this stage, can not go into the question whether allegation is true or false. It is not a case that allegation made does not make

out an offence rather the allegation made, makes out a cognizable offence. However, the moment a cognizable offence is made out, the police has right to investigate it and the Magistrate and this Court was not authorized to interfere with the investigation as apparent from the provision, contained in Section 156 of the Criminal Procedure Code and when the police proceeds to investigate, it is the bounded duty of the police to submit the charge sheet. However, the first information report can also be quashed in view of the malafide. However, so far the question of malafide is concerned, this case is not based on a complaint, but, on a first information report lodged and an investigation by the police and the moment the matter proceeds for investigation the chances of malafide lost it's importance. It is established principle that to exercise the power to quash the first information report in its inherent jurisdiction either under Section 482 of the Criminal Procedure Code or under Article 226 of the Constitution is sparingly taking into consideration the entire conspectus of the case and only in extra ordinary jurisdiction. Nothing has been brought on record to show that in extra ordinary situation exists, except some enmity, but, enmity cuts both ways and that has not made out a case under the facts and circumstances to exercise inherent jurisdiction to quash the first information report.

However, so far the quashing of the charge sheet, submitted, is concerned, a reliance has been placed upon a decision reported in **2008 CRI.L.J. (NOC) 1167 Cal** (supra). However, after submission of the charge sheet and taking cognizance on the charge sheet it is open to the petitioners to raise the issue at the stage of framing of charge to point out the defects in the charge sheet to the notice of the Chief Judicial Magistrate or the Subdivisional Judicial Magistrate, i.e., the Magistrate having the power to take cognizance and raise the issue that whatever material collected by the police, even taken on its face value, does not make out an offence. If the Magistrate satisfied, can pass an appropriate order. However, if the petitioners find that there is material to show that the case requires to have a proper investigation, then, the petitioners have the right under Section 173(8) of the Criminal Procedure Code to make a proper petition before the Magistrate for proper investigation. However, having regard to the fact that when the petitioners have got an alternative remedy to the question, raised to this Court that the investigation is not proper or there is no material in the charge sheet to take a cognizance in the case, they have remedy under Sections 173(8) or 22 of the Criminal Procedure Code to raise the issue before the magistrate, since the petitioners have got

alternative remedy available.

When the alternative remedy is available to the petitioners, it is not proper at this stage to quash the charge sheet by exercising extra ordinary writ jurisdiction under Article 226 of the Constitution to quash the charge sheet submitted by the police.

Hence, having regard to the facts and circumstances of the case, I do not find it fit to exercise extra ordinary jurisdiction, however, with an option to the petitioners to raise the issue at appropriate stage, this petition is **disposed off**.

(Gopal Prasad, J)

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