

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25961 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- EASTCHAMPARAN(MOTIHARI)

Ram Jhulan Upadhyay S/O Late Nago Upadhyay Vill. Ajagarawa Shishani
P.S.Pakaridayal Distt. East Champaran

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ansul, Adv.

For the State : Mr. R. B. Roy Raman, APP

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 01-05-2015

The petitioner seeks quashing of the order dated 28.04.2010 passed by the S.D.J.M, Sikrahana, East Champaran Motihari by which he has refused further investigation in Pakridyal P.S. Case No. 81 of 2006 and thereby recalled his earlier order dated 01.04.2010 for further investigation.

The facts of the case is that the petitioner was an accused in the present first information report and charge sheet was submitted as against him. Later an application was filed by the police authorities for further investigation which was allowed by the Magistrate on 17.06.2008. It appears that then the informant filed revision application as against this order before the District and Sessions Judge, Motihari vide Cr. Revision No. 316 of 2008 who set it aside

by his order dated 17.09.2008 and directed that the Magistrate to pass a fresh order as to whether further investigation was required in the facts of the case.

The Magistrate on remand once again on 01.04.2010 directed further investigation.

In the meanwhile the petitioner filed Cr. Writ No. 330 of 2009 seeking quashing of charge sheet in the aforesaid case. The writ application was dismissed by order dated 25.08.2009 noting therein that the Court had refused permission to reinvestigate the matter and hence further investigation was not carried out. It was on this basis that the impugned order recalling the order for further investigation was passed.

Then the petitioner filed Cr. Writ No. 444 of 2012 for modification of the said order but had sought permission at the out set to withdraw the same which was permitted by order dated 19.02.2013. It has been submitted on behalf of the petitioner that DIG by communication dated 30.12.2008 had not submitted that the Court had refused permission for further investigation but had merely stated that no order has been passed by it. Further submission is that it was only on account of a confusion having been created before this Court that the order for further investigation was recalled.

In the facts of the case, I am inclined to agree with the

counsel for the petitioner. However, this Court is not competent to pass an order as to whether further investigation is required or not in the facts of the case. This opinion is purely within the domain of the investigation agency and it is upto it to decide whether it wishes to take recourse to such a step.

Hence the application is disposed off with liberty to the Court below to pass an order in accordance with law ignoring previous history if such an application is filed.

(Anjana Prakash, J)

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