

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35181 of 2012

Arising out of PS.Case No. -106 Year- 2007 Thana-Madhwapur District- MADHUBANI

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Arun Kumar Ray, Son of Nantun Yadav, Village Patar, P.S. Saharghat, District Madhubani.

.... Petitioner

Versus

1. The State of Bihar.
2. Meena Devi, Wife of Dr. Arun Kumar Ray, Daughter of Yogendra Ray, Village Kusail, P.S. Pupari, District Sitamarhi.

.... Opposite Parties

with

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Criminal Miscellaneous No. 35290 of 2012

Arising out of PS.Case No. -106 Year- 2007 Thana-Madhwapur District- MADHUBANI

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Arun Kumar Ray, Son of Nantun Yadav, Village Patar, P.S. Saharghat, District Madhubani.

.... Petitioner

Versus

1. The State of Bihar.
2. Meena Devi, Wife of Dr. Arun Kumar Ray, Daughter of Yogendra Ray, Village Kusail, P.S. Pupari, District Sitamarhi.

.... Opposite Parties

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Appearance :

(In Cr.Misc. No. 35181 of 2012)

For the Petitioner : None

For the Opposite Party: None

(In Cr.Misc. No. 35290 of 2012)

For the Petitioner : None

For the Opposite Party: None

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

ORAL JUDGMENT

Date: 09-03-2015

None appears to make submissions on behalf of the petitioner who seeks quashing of order dated 07.06.2012, passed by the learned Chief Judicial Magistrate, Madhubani in G.R. Case No. 267 of 2007 (Madhwapur P.S. Case No. 106 of 2007).

2. It was alleged by the wife of the petitioner that the



petitioner brought her by a motorcycle from village Patar to Bhitha and when they were on the brick-laden road near a brick kiln, the petitioner went to attend to the call of nature but was not inclined to go home even at the request of his wife thereafter. The petitioner instead asked his wife to go inside a *Jhopri* situated nearby and when she declined to go there, this petitioner forcibly put the lady down on the ground at about 8 P.M. and stabbed her repeatedly with a knife on her neck and on its sides after mounting over her chest.

3. The case was investigated into by the police and it submitted a report "occurrence true but no clue". However, the learned Chief Judicial Magistrate after perusing the case diary and other relevant records as also statements of witnesses under Section 164 Cr.P.C. differed with the opinion of the Investigating Officer and concluded that offence under Sections 341, 323, 324, 307 and 34 were duly made out and that those offences appeared committed by the petitioner.

4. On perusal of the grounds which were set forth in the petition for quashing the First Information Report, what appears is that some statements have been made on the merit of the case as if this Court was a court of fact finally appreciating it by shifting the materials. Some probabilities and improbabilities were also pointed out but it is also not denied that the wife had been brutally injured and

she was advised for C & T-scan and X-ray of her wounds. So far as in paragraph-18 of the petition, the petitioner had cited AIR 1992 SC 604 (State of Haryana & Ors. Vs. Bhajan Lal & Ors.) and had submitted that if the allegations are bereft of truth and made maliciously, then the investigation has to end as such.

5. The jurisdiction of a Magistrate to differ with the opinion of the police in a case of the present nature was recognized long back in Raghubans Dubey Vs. State of Bihar reported in AIR 1967 SC 1167 as also in Kuli Singh & Ors. Vs. The State of Bihar & Ors. reported in 1978 BBCJ 400 in which it has been consistently held that if a Magistrate receives a final report from the police after conclusion of the investigation, there are three options available to him. He may accept the report. He may not accept the report and direct further investigation and finally differing from the opinion of the Investigating Officer, he may peruse the case diary to find out as to what offences were made out and who the real offenders were.

6. The Chief Judicial Magistrate, Madhubani appears having meticulously perused the police records which were submitted to him under Section 172 (3) Cr.P.C. and appears to have formed his own opinion on the basis of materials available to him in police report. It is an independent duty cast upon the Magistrate to peruse the police records and form his own opinion as regards the

commission of the offence as also persons who could have committed the offence. Such statutory duty performed diligently by the court below, does not require any interference from this Court.

7. Both petitions appear of no merit and the same are dismissed.

8. Any order staying the proceedings in the court below passed by this Court ever shall stand vacated.

(Dharnidhar Jha, J.)

Sanjay/N.A.F.R.

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