

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42389 of 2012

Arising Out of PS.Case No. -380 Year- 2002, Complaint, District- BANKA

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1. Surendra Pandit @ Soren Pandit
2. Naresh
3. Panchu Pandit
4. Lachhu Pandit
5. Mahesh Pandit
All sons Mithu Pandit
6. Bhairo Pandit S/O Mahadev Pandit
All residents of Village- Kushidal, Police Station- Fullidumar, District- Banka
7. Lakshman Yadav S/O Late Shibu Yadav
Resident Of Village- Letwa, Police Station- Fullidumar, District- Banka
.... Petitioner/s

Versus

1. The State of Bihar
2. Naresh Yadav son of late Jagdish Yadav, Resident of Village- Letwa, Police Station- Fullidumar, District- Banka
.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Nurul Hoda, Advocate
Mr. Ajay Kumar Sharma, Advocate
Mr. Satish Chandra Mishra, Advocate
For the Opposite Party/s : Mr. Nirmal Kumar Sinha, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 14-05-2015

The petitioners challenge the order dated 14.08.2007 passed by the Court of the Chief Judicial Magistrate, Banka, through which he has taken cognizance of an offence punishable under Sections 302/34 of the Indian Penal Code, against the petitioners.

Brief facts of the case are that the 2nd respondent filed a complaint before the Banka Police Station alleging that the petitioners herein caused the death of his father, by name Jagdish Yadav. His statement was recorded and Banka P.S. Case No.54 of 2001 was

registered mentioning Sections 302/34 of the Indian Penal Code. The petitioners herein were shown as accused.

After conducting investigation, the police submitted a final report under Section 173 Cr. P.C. stating that the allegations against the petitioners are found to be not true. Feeling aggrieved by that, the 2nd respondent filed a protest petition, before the Chief Judicial Magistrate, Banka. All the same, the final report was accepted. However, the trial Court treated the protest petition of the 2nd respondent as a complaint under Section 200 Cr. P.C. and recorded statement of the 2nd respondent and examined three more witnesses. Based upon that, he passed order dated 14.08.2007 taking cognizance of the offence.

Learned counsel for the petitioners submits that once the complaint of the 2nd respondent filed before the police resulted in registration of FIR, and after investigation, a final report was filed stating that the allegations made against the petitioners are incorrect, there was absolutely no basis for the trial Court to treat the protest petition as a private complaint. He further submits that whatever be the possibility of a protest petition being treated as a private complaint, before any final order is passed on the final report, once the report filed under Section 173 of the Cr. P.C. was accepted, the question of protest petition being treated as a complaint under Section

200 Cr. P.C. does not arise.

The learned Additional Public Prosecutor and the learned counsel for the 2nd respondent, on the other hand, submit that it is competent for the Chief Judicial Magistrate to treat the protest petition as a complaint under Section 200 Cr. P.C., and the mere fact that the report of the police under Section 173 Cr.P.C. was accepted, does not curtail the power of the Chief Judicial Magistrate.

The Criminal Procedure Code provides, not only for submission of a complaint before the police, resulting in registration of FIR, but also filing of a complaint by an aggrieved party before the Court, directly under Section 200 Cr. P.C. For all practical purposes, these are two independent channels for putting the process of criminal law, in motion and many a time, one excludes the other.

In the instant case, the 2nd respondent approached the police with a complaint, and that resulted in registration of an FIR wherein the petitioners herein were shown as accused. Once, they have registered the case, the police conducted investigation and on the basis of that, a final report was filed observing that the allegations against the petitioners are not true.

As properly advised, the 2nd respondent filed a protest petition. The concerned Court could have weighed the *pros and cons* of the final report, on the one hand, and the protest petition, on the



other hand, and taken a decision in this behalf. Even from perusal of the order challenged in this petition, it is evident that the trial Court accepted the final report, despite there being a protest petition. It only means that protest petition was not found to be acceptable.

Once the final report was accepted, the proceeding referable to the FIR stand terminated. If the second respondent was aggrieved on account of the acceptance of the final report filed by the police, he ought to have approached this Court by instituting appropriate proceedings. However, on his insistence, the protest petition was treated as a complaint under Section 200 Cr. P.C. Whatever be the possibility for the protest petition being treated as a complaint under Section 200 Cr. P.C., once the final report has been accepted, the question of keeping the matter alive through a different channel does not arise.

Hence, the petition is allowed and the order dated 14.08.2007 passed by the court of Chief Judicial Magistrate, Banka, in Complaint Case No.380 of 2002 is set aside.

(L. Narasimha Reddy, CJ)

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