

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26218 of 2013

Arising Out of PS.Case No. -50 Year- 2013 Thana -GOGRI District- KHAGARIA

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1. Shiv Kumar Paswan son of Late Nago Paswan,
2. Chandra Shekhar Paswan son of Shiv Kumar Paswan
Both resident of Vill- Sobhan Rai Tola, P.S- Gogari, District-
Khagaria.

.... Petitioners

Versus

1. The State of Bihar
2. Bhajo Paswan, son of Late Sitaram Paswan, resident of village-
Shobhan Rai Tola, P.S. Gogri, District- Khagaria

.... Opposite Parties

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with

Criminal Miscellaneous No.45405 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- KHAGARIA

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Pankaj Paswan S/O Shiv Kumar Paswan, Resident of Village- Sobhan Rai
Tola, P.S- Gogri, District- Khagaria

.... Petitioner

Versus

1. The State of Bihar
2. Bhajo Paswan S/O Late Sita Ram Paswan, Resident of Village- Sobhan
Rai Tola, P.S- Gogri, District- Khagaria.

.... Opposite Parties

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Appearance :

(In Cr.Misc. No.26218 of 2013)

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. A.P.P.

(In Cr.Misc. No.45405 of 2013)

For the Petitioner/s : Mr. Pankaj Kumar Jha

For the Opposite Party/s : Mr. A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

4 13-12-2016 In both the cases, since one order i.e. order dated

22.04.2013 passed in G.R. No.486/2013 arising out of Gogari P.S.

Case No.50/2013 registered for the offence under Section 436/34



of the Indian Penal Code was challenged, both petitions were heard together and are being disposed of by common order.

Heard Sri Pankaj Kumar Jha, learned counsel for the petitioners and Sri Madan Kumar, learned Addl. Public Prosecutor.

Learned counsel for the petitioners submits that on the basis of a written report of Opp.Party no.2, an F.I.R. was lodged against two petitioners of the first case and one petitioner in the second case on an allegation that they had put the house of the informant on fire. In the F.I.R., it was alleged that accused petitioners had legal right over the land in question. It has been argued that after registering the case, it was thoroughly investigated and finally a report was submitted vide Final Report No.65/2013 on 15.04.2013. During investigation, no sufficient evidence was noticed and, as such, petitioners' name were not incorporated in column no.11 of the chargesheet i.e. Annexure-2 to the present petition and petitioners were exonerated. It has been argued that though petitioners were exonerated by the Investigating Officer and final report was submitted, the learned Magistrate by the impugned order differing with the police report has taken cognizance of offence under Sections 436/34 of the Indian Penal Code and directed to transfer the case to the court of



Sri A.K.Gond, Judicial Magistrate for its disposal. It has been argued that once after investigation, the petitioners were not forwarded as accused, the learned Magistrate without assigning any reason was not authorized to pass order of cognizance.

In this case, earlier noticed was issued to the Opp.Party no.2 and despite the fact that he has appeared through his counsel, at the time of hearing, none appeared on behalf of Opp.Party no.2.

Sri Madan Kumar, learned Addl. Public Prosecutor tried to justify that the order has rightly been passed. However, he is not in a position to satisfy the Court as to whether order impugned indicates any reason for differing with the police report.

Besides hearing learned counsel for the parties, I have also perused the materials available on record, particularly the final report i.e. Annexure-2 as well as the order of cognizance. On perusal of the final report, it is evident that the petitioners were not forwarded as accused and final report was submitted. The learned Magistrate, though, was competent to pass order of cognizance differing with the police report, he was required to at least succinctly assign reason, however he has passed order of cognizance in a mechanical manner. On going through the impugned order, the Court is satisfied that no such reason has been



assigned. Accordingly, the impugned order is liable to be set aside,

Both Petitions stand allowed and the impugned order dated 22.04.2013 passed in Gogari P.S. No. 50/2013 corresponding to G.R. No.486/2013 is hereby set aside.

(Rakesh Kumar, J)

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