

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.15991 of 2013

Arising Out of PS.Case No. -141 Year- 2012 Thana -GOH District- AURANGABAD

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1. Bharosa Prasad Singh , son of Late Jagat Narayan Singh
 2. Arun Kumar Singh, son of Sri Bharosa Prasad Singh
 3. Bipin Kumar Singh, son of Sri Bharosa Prasad Singh
 4. Navin Kumar, son of Sri Bharosa Prasad Singh

All are residents of village- Bhalwandi, P.S. Goh, District-
Aurangabad

.... Petitioners

Versus

1. The State of Bihar
2. Dr. Ramanuj Singh, son of Late Ramashish Singh, resident of village-
Bhalwandi, P.S. Goh, District- Aurangabad Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Y.C. Verma, Sr. Adv.
Mr. Rajani Kant Singh, Adv.
For the Opposite Party/s : Mr. Madan Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

5 16-12-2016 Heard Sri Y.C. Verma, learned Senior Counsel,

assisted by Sri Rajani Kant Singh, learned counsel for the

petitioners and Sri Madan Kumar, learned Addl. Public

Prosecutor.

Four petitioners have approached this Court,

invoking its inherent jurisdiction under Section 482 of the Code of

Criminal Procedure, with a prayer to quash an order dated

06.03.2013 passed by the learned Sub Divisional Judicial

Magistrate, Daudnagar, Aurangabad in Goh P.S. Case

no.141/2012. By the said order, the learned Magistrate differing

with the police report has passed order of cognizance under



Sections 379, 506/34 of the Indian Penal Code.

Learned counsel for the petitioners submits that in relation to partition of the property, there was some dispute in between the parties. However, colour of criminal offence was given and, thereafter F.I.R was lodged by the informant arraying the petitioners as accused under Sections 461, 504, 506,379/34 of the Indian Penal Code. He submits that the case was thoroughly investigated by the police and during investigation, it was found that it was only a land dispute and no criminal offence was noticed by the police and finally, the police submitted final report vide Final Report no.191/12 dated 31.10.2012. Learned counsel for the petitioners has placed reliance on Annexure-2 i.e. copy of the final report and submits that in Coloumn no.11 , none of the petitioners were mentioned as accused and police report was submitted as civil dispute. He submits that though the police has submitted final report exonerating all the accused persons, the learned Magistrate only by way of referring to certain paragraphs of the case diary has passed order of cognizance. Learned counsel for the petitioners submits that once the police had submitted final report exonerating the petitioners, in that event the learned Magistrate , though was competent to take cognizance differing with the police report, was required to assign reason for differing



with the police report, but the learned Magistrate has only referred to certain paragraphs of the case diary.

In this case, earlier on 23.11.2016 the learned counsel for the petitioners had argued that even in paragraphs of the case diary, which have been referred by the learned Magistrate in the impugned order, nothing has been indicated regarding commission of any offence and, thereafter, this Court was persuaded to summon case diary, which has been received and kept on record.

The learned counsel for the petitioners, by way of referring to those paragraph nos. 2,5,6,7,9 and 14 of the case diary submits that even in those paragraphs, no sufficient material has come to show commission of offence by the petitioners. He submits that paragraph nos. 2 is nothing but re-statement of the informant. So far paragraph nos.5,6,7 and 14 of the case diary, it has been argued that in those paragraphs, witnesses have not at all said any thing regarding offence, but they had said that there was dispute relating to partition. Only in paragraph-9 of the case diary, the witness, who is none else but own brother of the informant, has stated something.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Normally, the



order of cognizance, which is passed differing with the police report, is required to be set aside in case in the order there is no reason for differing with the police report, but since the learned Magistrate has referred to certain paragraphs of the case diary, this Court examined the same and after examining the case diary, the Court is satisfied that the learned Magistrate has committed error in passing the order impugned.

Accordingly, the order impugned dated 06.03.2013 passed in Goh P.S. Case no.141/2012 passed by the learned Sub Divisional Judicial Magistrate, Daudnagar, District- Aurangabad is hereby set aside. The petition stands allowed.

(Rakesh Kumar, J)

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