

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.25591 of 2013

Arising Out of PS.Case No. -22 Year- 2011 Thana -CHANPATIA District-
WESTCHAMPARAN(BETTIAH)

=====

Khusboo Kumari @ Shailani Kumari Daughter of Baidhnath Sah, resident
of Village- Tirhutia Tola (Gikka Chapra), Police Station- Chanpatia,
District- West Champaran

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

=====

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Adv.

For the Opposite Party/s : Mr. Binod Kumar (App)

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

2 01-04-2016 Heard Sri Sanjay Kumar, learned counsel for the
petitioner and learned Addl. Public Prosecutor.

The sole petitioner, invoking inherent jurisdiction of
this Court under Section 482 of the Code of Criminal Procedure,
has prayed for quashing of an order dated 08.09.2011 passed by
the learned Chief Judicial Magistrate, Bettiah, West Champaran in
Chanpatia P.S. Case no.22 of 2011. By the said order, the learned
Magistrate has taken cognizance of offence under Sections
341,323, 324, 447, 427, 379, 504 and 34 of the Indian Penal Code
against all nine accused persons, which include the petitioner.

Learned counsel for the petitioner submits that it is true
that the petitioner was shown as one of the accused in the F.I.R.,



however in the F.I.R. there was no specific accusation against the petitioner. F.I.R. was lodged against nine accused persons, who all are the family members of the petitioner. During investigation though the accusation against other accused persons were found true, the petitioner was found innocent and her name was not mentioned in column no.11 of the chargesheet. Meaning thereby, the petitioner was exonerated by the Investigating Officer. However, the learned Magistrate, without recording any reason for differing with the police report so far as case of petitioner is concerned, in a perfunctory manner, has passed order of cognizance and summoned all the accused persons including the petitioner,

Sri Damodar Prasad Tiwary has opposed the prayer of the petitioner. He submits that there is no restriction for the learned Magistrate to pass order of cognizance differing with the police report. However, he is not in a position to satisfy the court as to whether the learned Magistrate, while passing order of cognizance and summoning the petitioner, had assigned any succinct reason.

Besides hearing learned counsel for the parties I have also perused the materials available on record. Fact remains that the petitioner was not forwarded as accused, whereas other eight

accused, who were named as accused with the petitioner in the F.I.R., were forwarded as accused. Though, the learned Magistrate has passed order of cognizance summoning all other accused persons, he had not indicated anything as to what was the reason for differing with the police report, while proceeding with the case against the petitioner, who was not chargesheeted. Once in a police case, after investigation, final report is submitted by the police, same may not be treated as waste paper. Once a report is submitted exonerating the accused, the learned Magistrate, who is competent to pass order of cognizance differing with the police report, is required to succinctly assign reason. Since no reason has been assigned, while differing with the police report so far as the petitioner is concerned, the Court is of the opinion that the order of cognizance so far as the petitioner is concerned is not sustainable.

Accordingly, order of cognizance dated 08.09.2011 passed by the learned Chief Judicial Magistrate, Bettiah, West Champaran in Chanpatia P.S. Case No.22 of 2011 so far as the petitioner is concerned is hereby set aside.

The petition stands allowed.

(Rakesh Kumar, J)

NKS/-

U			
---	--	--	--