

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.572 of 2016

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Kedar Turha S/o Nagina Turha R/o village - Miskarahi Mathiya, P.S. Mairwa,
District - Siwan

.... Petitioner

Versus

1. The State of Bihar through the Director General of Police, Govt. of Bihar, Patna
2. The Inspector General of Police, Muzaffarpur Range, Muzaffarpur
3. The Deputy Inspector General of Police, Saran Range, Chapra
4. The Superintendent of Police, Siwan
5. The Sub - Divisional Police, Siwan
6. The Officer - In - Charge, Mairwa Thana, Siwan

.... Respondents

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Appearance :

For the Petitioner : Mr. Akshay Lal Pandit, Advocate

For the Respondents : Mr. Vinay Kirti Singh, G.A.-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

JUDGMENT AND ORDER

C.A.V.

Date: 04-08-2016

With the help of this writ petition, made under Articles 226 and 227 of the Constitution of India, the petitioner herein, who is informant of Mairwa Police Station Case No.184 of 2014, seeks directions to be issued for taking appropriate action against Mantu Sahi @ Vijay Pratap Sahi and Deepak Sahi, who were named as accused in the First Information Report along with seven other accused persons, but they were not sent up for trial, while submitting the *police report (charge sheet)* No. 193/2014, dated 30.11.2014, in spite of specific accusations made against them not only by the eye witnesses, but also by the injured persons. The petitioner further seeks that the statement of the injured, who subsequently succumbed

to the injuries, be treated as dying declaration by directing respondent No.1, namely, the Director General of Police, Bihar, to look into the matter afresh.

2. Let me take notice of the material facts, which has given rise to this writ petition. On the basis of a *fardbeyan* lodged by the present petitioner, i.e., the informant, Mairwa Police Station Case No.184 of 2014, under Sections 147/148/149/307/506 of the Indian Penal Code and Section 27 of the Arms Act, 1959, was registered against nine persons, namely, Mantu Sahi @ Vijay Pratap Sahi, Deepak Sahi, Tribhuwan Sahi, Lallan Singh, Binod Singh, Pappu Kumar, Rudal Singh, Bunt Singh and Guddu Singh, the case against the accused being, in brief, thus,

(i) On 06.09.2014, at 10.15 PM, when the informant, along with his family members, was sitting after they had their dinner, the said nine accused persons came to the house of the informant and started indiscriminate firing. While two bullets, fired by accused Mantu Sahi @ Vijay Pratap Sahi from his country-made pistol, hit Raj Kumari Devi, sister-in-law (*bhabhi*) of the informant, in her right abdominal wall (rib-cage), one bullet, fired by accused Deepak Sahi, from his country-made pistol, too, hit Raj Kumari Devi, in her right abdominal wall (rib-cage), and accused Tribhuwan Sahi, fired from his country-made pistol, hitting Poonam Kumari on her

right hand, and two bullets hit Nitu Devi on her buttock.

(ii) Having indulged in firing, as mentioned hereinbefore, the said nine accused persons fled away from the place of occurrence. The informant's neighbour, who gathered at the place of occurrence, accompanied by the informant took, all the injured victims to Referral Hospital, Mairwa, from where the injured were referred to Sadar Hospital, Siwan.

(iii) Thereafter, in view of their critical conditions, Raj Kumari Devi and Nitu Devi were referred to Patna Medical College and Hospital, Patna, but both of them succumbed to their injuries during the course of treatment.

3. Though the informant had made specific allegation against Mantu Sahi @ Vijay Pratap Sahi, as accused No.1, Deepak Sahi as accused No.2, the police by ignoring the statements of witnesses, namely, Ram Nagiga Turha, Usha Devi, Suman Devi, Veer Prakash Prasad, and also the statement of the injured, who had succumbed to the injuries, submitted *charge sheet* only against seven of the accused persons, exonerating by way of a *final report*, the remaining two accused, namely, Mantu Sahi @ Vijay Pratap Sahi and Deepak Sahi, on the ground that the said two accused could not have been present at the place of occurrence inasmuch as one of them was lying in a hospital and the other one was attending the coaching institute.

4. The result of the investigation has been, according to the petitioner, manipulated by the police, more specifically, by the Investigating Officer and the Sub Divisional Police Officer, Sadar, Siwan.

5. With the above allegations, this writ petition has been filed, under Article 226 of the Constitution of India, *inter alia*, issuance of a writ of *mandamus* to the respondents to take appropriate action against the Investigating Officer and the Sub Divisional Police Officer, Sadar, Siwan, who have ignored the dying declaration made by Raj Kumari Devi, which, according to the writ petitioner, are admissible under Section 132(1) of the Evidence Act.

6. I have heard Mr. Akshay Lal Pandit, learned Counsel, appearing for the petitioner, and Mr. Vinay Kirti Singh, learned Government Advocate No.3, appearing for the respondents.

7. It is Chapter-XII of the Code, which deals with information to the police and the power of the police to conduct investigation. Ordinarily, it is the First Information Report, which sets, in motion, the machinery of law.

8. Let me, therefore, consider, first, the provisions contained in Section 154 of the Code. Sub-Section (1) of Section 154 provides that every information relating to the commission of a cognizable offence, if given orally to an officer-

in-charge of a Police Station, shall be reduced to writing by him or under his direction and be read over to the informant and every such information, whether given in writing or reduced to writing, shall be signed by the person giving it and Sub-section (2) of Section 154 requires that a copy of such information shall be given, forthwith, free of cost, to the informant.

9. Sub-section (1) of Section 156 vests, in the officer-in-charge of every Police Station, the power to investigate any cognizable case without the order of a Magistrate and Sub-section (3) of that Section authorizes the Magistrate, empowered under Section 190, to order an investigation as mentioned in Sub-section (1) of that section.

10. As regards the information given to an Officer-in-Charge of a Police Station of the commission of a non-cognizable offence, within the limits of such a Police Station, the duty of such an officer is to enter or cause to be entered the substance of the information in a book to be kept by such officer, in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate, but he cannot, in the light of Section 155(2), investigate into such a case without the order of a Magistrate having the power to try such a case or commit the case for trial. When, however, a police officer receives an order from a Magistrate to investigate a non-cognizable case, his powers, according to Section 155(3),

to carry out investigation will be the same as in the case of a cognizable case.

11. Coupled with what is indicated above, one should also bear in mind that Sub-section (1) of Section 157 lays down that if, from the information received or otherwise, an officer-in-charge of a Police Station has reason to suspect the commission of an offence, which he is empowered, under Section 156, to investigate, he shall, forthwith, send a *report* of the same to a Magistrate empowered to take '*cognizance*' of such offence upon a *police report* and shall proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender.

12. There are, however, two provisos to sub-Section (1) of Section 157. Proviso (b) states that if it appears to the officer-in-charge of a Police Station that there is no sufficient ground for entering on an investigation, he shall not investigate the case; but in such a case, Sub-section (2) of Section 157 requires that the officer shall, forthwith, notify to the informant the fact that he will not investigate the case or cause it to be investigated.

13. Thus, in a given case, in the light of the proviso (b) to Sub-section (1) of Section 157, the police officer has the option of not investigating a case if an information, as to the



commission of any offence, is given against any person by name provided that the case is not of a serious nature and if it appears to the Officer-in-Charge of the Police Station that there is no sufficient ground for entering on an investigation into the case. Section 158 contemplates sending to the Magistrate a *report*, as envisaged in Section 157, through such superior police officer as the State Government may, by general or special order, appoint in that behalf, and such superior police officer has the power to give such instruction as he thinks fit and such instruction shall also be transmitted to the Magistrate along with the *report*.

14. Notwithstanding the fact that Section 157 empowers the police not to investigate a case, the Magistrate, on receiving the *report* as contemplated in Section 157 read with Section 158, has the power to direct investigation or, if he thinks fit, at once, proceed or depute any Magistrate subordinate to him to hold preliminary inquiry or, otherwise, to dispose of the case in the manner as provided in the Code.

15. What the officer-in-charge of a Police Station is required to do, on completion of the investigation, is set out in Section 173. Sub-section (2)(i) of Section 173 provides that as soon as an investigation is completed, the officer-in-charge of a Police Station shall forward to the Magistrate empowered to take '*cognizance*' of the offence on a *police report*, a *report*, in

the form prescribed by the State Government, setting out various particulars including whether, in the opinion of the officer, any offence appears to have been committed and if so, by whom.

16. What is, now, of utmost importance to note is that Sub-section (2)(ii) of Section 173 states that the officer shall also communicate, in such manner as may be prescribed by the State Government, to the person, if any, by whom the information relating to the commission of the offence was first given as to what action had been taken by him. Sub-section (1) of Section 190 then, proceeds to enact that any Magistrate of the First Class and any Magistrate of the Second Class, specially empowered in this behalf under Sub-section (2) of Section 190, may take 'cognizance' of any offence: (a) upon receiving a 'complaint' of facts, which constitute such offence, or (b) upon a '*police report*' of such facts, or (c) upon '*information*' received from any person, other than a police officer or upon his 'own knowledge', that such offence has been committed.

17. I am concerned, in this case, only with Clause (b), because the question, I am examining here, is :

Whether a Magistrate is bound to issue notice to the first informant or to the injured or to any relative of the deceased, when the Magistrate is considering the *police report* submitted under Section 173(2)(i), even if, when the *police*



report indicates that the investigation has revealed that the offence(s) committed by any or some of the accused persons. In other words, whether a Magistrate is bound to issue notice to the first informant or to the injured or to any relative of the deceased, when the Magistrate is considering a *police report*, whereby while submitting the *charge sheet*, the police gives the charge sheet only against some of the accused named as offenders in the First Information Report.

18. The Supreme Court, in ***Bhagwant Singh v. Commr. of Police***, reported in **1985 CriLJ 1521**, has pointed out that when an informant lodges First Information Report with the officer-in-charge of a police station, he does not fade away with the lodging of the First Information Report; rather, he is very much concerned with what action is initiated by the officer-in-charge of the police station on the basis of the First Information Report lodged by him. No sooner he lodges the First Information Report, a copy thereof it has to be supplied to him, free of cost, under Sub-section (2) of Section 154.

19. If, notwithstanding the First Information Report, the officer-in-charge of a police station decides not to investigate the case on the ground that there is no sufficient ground for entering on an investigation, he is required, under Sub-section (2) of Section 157, to notify to the informant the fact that he is not going to investigate the case or cause it to be



investigated. This apart, the officer-in-charge of a police station is obliged, under Sub-section (2)(ii) of Section 173, to communicate to the informant as to what the investigation, conducted by the police, has revealed. Further-more, the officer-in-charge of the police station is also required to supply to the informant a copy of the *police report*, which he has forwarded to the Magistrate under Section 173(2)(i). [see ***Bhagwant Singh*** (supra)].

20. The question, therefore, is as to why action taken by the officer-in-charge of a police station, on the First Information Report, is required to be communicated to the informant along with the *report*, which is forwarded to the Magistrate under Sub-section (2)(i) of Section 173. The reason is obvious and the reason, as pointed out in ***Bhagwant Singh*** (supra), is that the informant, who sets the machinery of investigation into motion by filing the First Information Report, must know what is the result of the investigation initiated on the basis of the First Information Report, which he had lodged.

21. The informant, having taken the initiative of lodging the First Information Report with a view to initiating investigation by the police for the purpose of ascertaining whether any offence has been committed and, if so, by whom, he is vitally interested in the result of the investigation and, hence, the law requires that the action taken by the officer-in-

charge of a police station, on the First Information Report, should be communicated to the informant. This apart, even the *report*, forwarded by such an officer to the Magistrate under Sub-section (2)(i) of Section 173, should also be supplied to the informant. [See **Bhagwant Singh** (supra)].

22. Now, when the *report*, forwarded by the officer-in-charge of a police station to the Magistrate, under Sub-section (2)(i) of Section 173, comes up for consideration by the Magistrate, one of two different situations may, as pointed out in **Bhagwant Singh** (supra), arise. The *report* may conclude that an offence appears to have been committed by a particular person or persons and, in such a case, the Magistrate may do one of three things: (i) he may accept the *report* and take 'cognizance' of the offence and issue process or (ii) he may disagree with the *report* and drop the proceeding or (iii) he may direct further investigation under Sub-section (3) of Section 156 and require the police to submit a further *report*.

23. The *report*, submitted under Section 173(2)(i), may, on the other hand, state that, in the opinion of the police, no offence appears to have been committed and where such a *report* has been made, the Magistrate, according to the Supreme Court, in **Bhagwant Singh** (supra), has, once again, the option to adopt one of three courses: (i) he may accept the *report* and drop the proceeding or (ii) he may disagree with the



report and, taking the view that there is sufficient ground for proceeding further, take "*cognizance*" of the offence and issue process or (iii) he may direct further investigation to be made by the police under Sub-section (3) of Section 156. Where, in either of those two situations, the Magistrate decides to take "*cognizance*" of the offence and to issue process, the informant is not prejudicially affected nor can the injured or, in case of death, any relative of the deceased really feel aggrieved, because *cognizance* of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed.

24. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, but there is no sufficient ground for proceeding against others, mentioned in the First Information Report, the informant, as noted in ***Bhagwant Singh*** (supra), would certainly be prejudiced, because the First Information Report, lodged by him, would have failed its purpose, wholly or in part. Moreover, when the interest of the informant, in prompt and effective action being taken on the First Information Report lodged by him, is clearly recognized by the provisions contained in Sub-section (2) of Section 154, Sub-section (2) of Section 157 and subsection (2)(ii) of Section 173, it must be presumed that the informant would equally be

interested in seeing that the Magistrate takes '*cognizance*' of the offence and issues processes against all those, who may have been named by him in the First Information Report, because that would be culmination of the First Information Report lodged by him.

25. There can, therefore, be no doubt, as held in ***Bhagwant Singh*** (supra), that when, on a consideration of the *report* made by the officer-in-charge of a police station under Sub-section (2)(i) of Section 173, the Magistrate is not inclined to take '*cognizance*' of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take '*cognizance*' of the offence and issue process.

26. It has been further clarified and authoritatively held, in ***Bhagwant Singh*** (supra), that in a case, where the Magistrate, to whom a *report* is forwarded under sub section (2)(i) of Section 173, decides not to take '*cognizance*' of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the *report* as to why the Magistrate shall take cognizance of offence and proceed against all and not only against those, who may

have been named as offenders in the First Information Report.

27. When a '*police report*', within the meaning of Section 2(r) of the Code, is submitted to a Magistrate for taking of '*cognizance*', the Magistrate may, in terms of Clause (b) of Section 190(1) of the Code, take '*cognizance*' if the *police report* discloses commission of an offence. The Magistrate, in such a case, may also, instead of taking '*cognizance*', direct, in the light of what has been held in ***Bhagwant Singh*** (supra), '*further investigation*'.

28. Let me, now, turn to the most crucial question: When is '*further investigation*' possible? When can a Magistrate direct '*further investigation*'? These questions, in turn, bring us, to the question as to what is an '*investigation*', how does '*reinvestigation*' differ from '*further investigation*'?

29. '*Investigation*', it maybe noted, has been defined in Section 2(h) of the Code. The Supreme Court, in ***H.N. Rishbud v. State of Delhi***, reported in 1955 CriLJ 526, dealt with the definition of '*investigation*' under the Code of Criminal Procedure, 1898, which is same under the new Code and after analyzing the provisions of Chapter-IV of the that Code (which corresponds to Chapter-XII of the new Code) described '*investigation*' thus:

...under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and



circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Information of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and it so taking the necessary steps for the same by the filing of charge-sheet under Section 173.

30. Before proceeding further, what needs to be noted is that on completion of investigation, when police submits *report*, in terms of Section 173(2)(i), informing the Magistrate that no incriminating material has been found against the person named as an accused in the First Information Report or that the materials, unearthed during investigation, are inadequate to warrant prosecution of the person named as an accused in the First Information Report, such a *report* is popularly known as '*final report*'; whereas a *report*, which the police submits in terms of the provisions of Section 173(2)(i), stating to the effect that materials, warranting prosecution of all or of some of the persons, named in the First Information Report, have been unearthed on

investigation, such a *report*, suggesting prosecution of any person, as an accused, is commonly known as '*charge-sheet*'.

31. On completion of investigation, conducted by police or any other agency, when either no incriminating material is found against a person or the investigation, so conducted, is unsatisfactory or improper and, in such a case, when an investigation is directed or commenced by an agency, which is not only distinct and different from the agency, which had conducted the earlier investigation, but is also an agency, which is under the control of an authority, other than the one, which had control over the agency, which had conducted the earlier investigation, it becomes a case of "*re-investigation*". Say, for instance, when an investigation, conducted by the local police, has resulted into submission of *final report* or charge-sheet and some allegations are made that the investigation conducted was not proper and when, in such circumstance, the State Government entrusts the case for 'investigation', to its any other or superior agency, such as, Criminal Investigation Department (in short, 'the CID'), such an investigation can be regarded as '*further investigation*' and not '*re-investigation*', for, the police and the CID come under one and the same Government; but on completion of investigation by the local police or the CID or without completion thereof, an investigation is commenced by an agency, say for instance by

the Central Bureau of Investigation (i.e., CBI), which comes under an authority, which is distinct and different from the State Government, it becomes a case of '*re-investigation*'. (See ***State of Andhra Pradesh v. A.S. Peter*** (AIR 2008 SC 1052)).

32. Having held as indicated above, it is, now, time to point out that the informant had named, in the First Information Report, as many as nine persons as accused involved in the commission of offences under Sections 147/148/149/307/506 of the Indian Penal Code and Section 27 of the Arms Act, and when the police, upon investigation, submitted *police report* (i.e., *charge-sheet*), under Section 173(2)(i), against seven of the accused persons named in the First Information Report, the learned Chief Judicial Magistrate ought not to accept such a *report* without giving the informant a notice to have his say as to why the *report*, so submitted by police, be not accepted. No such notice has, admittedly, been given to the informant.

33. Situated thus, it becomes clear that the informant still has the right, if he so deems necessary, to challenge the order, if any, whereby processes against two of the persons, named as accused in the First Information Report, have not been directed to be issued.

34. Since the petitioner has neither brought on



record of the present criminal writ petition the *final report* submitted under Section 173(2) of the Code of Criminal Procedure nor the present stage of the case, this Court has kept itself confined to the legal issues as regards the power of a Magistrate to give notice to the informant, while accepting the *final form*, when the investigating agency has not sent up some of those accused, who may have been named in a First Information Report.

35. In view of the above, it is hereby, in the interest of justice, directed that learned Chief Judicial Magistrate shall, upon receipt of the *police report*, submitted under Section 173(2)(i) of the Code of Criminal Procedure, issue notice to the informant (i.e., the petitioner herein) giving him opportunity to have his say in the matter and, then, pass appropriate order(s) in accordance with law. Learned Magistrate may also, if so warranted by the materials contained in the case diary, direct further investigation so that no miscarriage of justice takes place.

36. However, if the learned Chief Judicial Magistrate has, upon taking cognizance, already committed the case to the Sessions Judge, then, the learned trial Court shall pass necessary order(s) in accordance with law in the light of the observations made and the directions given hereinabove.

37. With the above observations and directions,

this writ petition is disposed of.

(I. A. Ansari, CJ)

Pawan/-

AFR/NAFR	A.F.R.
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