

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21477 of 2016

Arising Out of PS.Case No. -254 Year- 1995 Thana -BUXAR District- BUXAR

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1. Sanjay Tiwari @ Sanjay Kumar Tiwari son of late Ram Pravesh Tiwari
resident of village Ramdiha, P.S. Buxar (M), District Buxar at present
residing at Civil Lines, Buxar Hospital Road, Buxar. Petitioner/s
Versus

1. The State of Bihar.

2. Binod Upadhyay son of Sidheshwar Upadhyay resident of Civil Lines,
Buxar Hospital Road, Buxar. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra, Advocate

For the Opposite Party/s : Mr. Narendra Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI

SHARAN SINGH

ORAL ORDER

6 08-12-2016

An order passed by learned Chief Judicial Magistrate,

Buxar in connection with Buxar (Town) P.S. Case No. 254 of
1995, whereby he has taken cognizance of the offence punishable
under Sections 302/34 of the Indian Penal Code and Section 27 of
the Arms Act, is under challenge in the present proceeding under
Section 482 of the Code of Criminal Procedure.

2. The short point, which has been taken on behalf of
the petitioner to assail the order is that it has been passed without
there being any Police report after completion of investigation
within the meaning of Section 173 of the Code of Criminal
Procedure, 1973 (hereinafter referred to as the Code) on record.

3. Keeping in mind the fact that the case was
registered in the year 1995 and a plea was being taken that till date
no Police report had been submitted, this Court by an order dated



01.12.2016 had directed the Superintendent of Police, Buxar to be present in Court and to inform the circumstances under which the Police report could not be submitted.

4. An affidavit has accordingly been filed on behalf of the Superintendent of Police, Buxar, who is personally present. It has been stated in the said show cause/affidavit that though complete carbon copy of the case diary is available in the office and there is a noting by the Investigating Officer in the case diary to the effect that final form was being submitted in the year 1997 itself, but some how or the other final form could not be submitted in the court. The Investigating Officer of the case is presently not within the jurisdiction of the State Police and is on deputation.

5. The fact thus, remains that learned court below has passed the order taking cognizance in the absence of a Police report. Section 190 of the Code of Criminal Procedure enumerates three bases upon which a court can take cognizance, which are as follows:-

“ (a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed”



6. The expression 'police report' means a report submitted or forwarded by the Officer-in-charge of a police station on completion of investigation in the manner prescribed under Section 173(2) of the Code. Section 173 of the Code reads thus:-

173. Report of police officer on completion of investigation.

(1) xxx xxx xxx

(1-A) xxx xxx xxx

(2) (i) *As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-*

(a) *the names of the parties;*

(b) *the nature of the information;*

(c) *the names of the persons who appear to be acquainted with the circumstances of the case;*

(d) *whether any offence appears to have been committed and, if so, by whom;*

(e) *whether the accused has been arrested;*

(f) *whether he has been released on his bond and, if so, whether with or without sureties;*

(g) *whether he has been forwarded in custody under section 170.*

(h) *whether the report of medical*



examination of the woman has been attached where investigation relates to an offence under sections 376, 376-A, 376-B, 376-C or 376-D of the Indian Penal Code (45 of 1860).

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3)	xxx	xxx	xxx
(4)	xxx	xxx	xxx
(5)	xxx	xxx	xxx
(6)	xxx	xxx	xxx
(7)	xxx	xxx	xxx
(8)	xxx	xxx	xxx

7. There should not be any scope of doubt that a police report is outcome of investigation conducted by the police and it is, in fact, conclusion arrived at by the Investigating Officer on the basis of materials gathered in course of investigation. The conclusion so arrived at can only formed the basis of a competent court to take cognizance thereupon under Section 190(1)(b) of the Code and to proceed with the case for trial. My view finds support from Supreme Court decision in case of *Vijender vs. State of Delhi* reported in *1997(6) SCC 171 (Para 25)*.

8. None of the circumstances as mentioned above



exists in the present case. The order taking cognizance passed by the Magistrate, therefore, cannot be sustained, which is accordingly set aside. This application is accordingly allowed.

9. It is however observed that the Superintendent of Police, Buxar shall ensure that after taking due permission from the court, final report is submitted in the court below within a period of one month from today. Once such final form is submitted, the Chief Judicial Magistrate shall be required to proceed accordingly.

10. Personal appearance of the Superintendent of Police, Buxar stands dispensed with.

11. This disposes of this application.

(Chakradhari Sharan Singh, J)

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