

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44165 of 2015

Arising Out of PS.Case No. -126 Year- 1994 Thana -CHANDAULI District- GAYA

Satyendra Singh, Son of Late Daroga Singh, Resident of Village - Delha, P.S. -
Buniyadganj, District - Gaya. Petitioner

Versus

The State of Bihar. Opposite Party

Appearance :

For the Petitioner/s : Mr. Chandra Bhushan Das, Advocate

For the Opposite Party/s : Mr. Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-05-2016

By way of the present application preferred under Section 482 of the Code of Criminal Procedure, the petitioner seeks quashing of the order dated 02/25.07.2007 passed in Chandauti P.S. Case No. 126 of 1994 by the learned Chief Judicial Magistrate, Gaya whereby the learned Chief Judicial Magistrate has summoned the petitioner to face trial for the offences punishable under Sections 302, 379, 120-B of the Indian Penal Code and Section 27 of the Arms Act.

2. It is a case of multiple murder. Three persons from the side of the prosecution were killed in the incident. The petitioner is one of the accused named in the FIR with allegation of overt act.



3. It is submitted that on completion of investigation, the police had submitted final report against the petitioner, but while passing the impugned order dated 25th July, 2007, the learned Chief Judicial Magistrate, Gaya differed with the police report and summoned the petitioner also for facing prosecution under Sections 302, 379, 120-B/34 of the Indian Penal Code and 27 of the Arms Act along with other eleven accused persons. It is further submitted that no reason has been assigned by the Magistrate for differing with the police report and in view of the statutory power given to the police to hold investigation into a cognizable offence, the report submitted under Section 173(2) of the Code of Criminal Procedure by the police ought to have been respected by the Magistrate and the case against the petitioner should have dropped.

4. In my considered opinion, the argument of the learned counsel for the petitioner is fallacious. The Magistrate has the jurisdiction to ignore the opinion expressed by the Investigating Officer and independently apply his mind to the facts which have emerged from investigation and pass appropriate order.

5. In the matter of **Uma Shankar Singh v. State of Bihar**, reported in **(2010) 9 SCC 479**, the Supreme Court opined that the magistrate is not bound to accept the final report filed by the investigating agency under Section 173(2) of the CrPC. It

observed in paragraph 19 as under:-

“19. ... even if the investigating authority is of the view that no case has been made out against an accused, the Magistrate can apply his mind independently to the materials contained in the police report and take cognizance thereupon in exercise of his powers under Section 190(1)(b) CrPC.”

6. The said principle has been followed by the Supreme Court in yet another decision in **Moti Lal Songara v. Prem Prakash alias Pappu and Another**, reported in (2013) 9 SCC 199.

7. In **M/s. India Carat Pvt. Ltd. v. State of Karnataka and Another**, reported in (1989) 2 SCC 132, a three Judge Bench after analyzing the provisions of the CrPC, referred to the decision in **Abhinandan Jha v. Dinesh Mishra**, reported in **AIR 1968 SC 117** and **H.S. Bains v. State (UT of Chandigarh)** reported in (1980) 4 SCC 631 and ruled in paragraph 16 as under:-

“16. The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account



the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190 (1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. The High Court was, therefore, wrong in taking the view that the Second Additional Chief Metropolitan Magistrate was not entitled to direct the registration of a case against the second respondent and order the issue of summons to him.”

8. Again, in **Dharam Pal & Ors. v. State of Haryana & Another**, reported in (2014) 3 SCC 306, the

constitution Bench of the Supreme Court has authoritatively pronounced in paragraphs 35 and 36 as under:-

“35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) CrPC. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

36. This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be

triable by the Sessions Court.”

9. Thus, it would be evident from the decisions of the Supreme Court noted hereinabove that on receiving police report under Section 173(2) of the CrPC the Magistrate may take cognizance of the offences under Section 190(1)(b) of the CrPC straightway and issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The Magistrate is not bound with the opinion of the police. He has to apply his mind to the allegations made in the FIR, statements of the witnesses recorded under Section 161(3) of the CrPC, gist of the allegations mentioned in the police report and the documents submitted along with report.

10. Keeping in mind the above ratio laid down by the Supreme Court in the decisions discussed above, when I look to the facts of the present case, I find that the allegations made in the FIR are quite serious. Three persons from the side of the informant were killed in the incident. Though the police submitted a final report as against the petitioner while submitting charge-sheet against the others, learned Chief Judicial Magistrate has differed with the police report and vide impugned order dated 02/25.07.2007, summoned the petitioner to face trial.

11. I see no illegality in order passed by the learned

Chief Judicial Magistrate, Gaya. The reasoning assigned in the order for taking cognizance and summoning the petitioner are neither erroneous nor perverse.

12. Accordingly, the application, being devoid of any merit, is rejected.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	
CAV DATE	
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