

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24541 of 2013

Arising Out of PS.Case No. -189 Year- 2007 Thana -RUNISAIDPUR District- SITAMARHI

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Shashi Bhushan Singh @ Shashi Bhushan Prasad Singh Son Of Late
Ganesh Prasad Singh Resident Of Village- Morsand, P.S. Runnisaidpur,
District- Sitamarhi

.... Petitioner/s

Versus

1. The State Of Bihar
2. Rama Shankar Singh Son Of Late Nand Kishore Singh Resident Of
Village- Athari, P.S.- Runnisaidpur, District- Sitamarhi

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pushpendra Kumar Singh
For the Opposite Party/s : Mr. Md.Sufiyan (APP)
Sri Jagdish Prasad
Mr. Birendra Kumar

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

3 27-06-2016 Heard Sri Pushpendra Kumar Singh, learned counsel for
the petitioner, Mr. Md. Sufiyan, learned A.P.P. as well as Sri
Jagdish Prasad, learned counsel, who was assisted by Mr. Birendra
Kumar, learned counsel for the opposite party no. 2 / informant.

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 20.4.2011 passed by the
learned Chief Judicial Magistrate, Sitamarhi in Runnisaipur P.S.
Case No. 189 of 2007, G.R. No. 2077 of 2007 registered for the
offence under section 341 / 323/ 379/ 504/ 34 of the Indian Penal
Code. By the said order the learned Chief Judicial Magistrate has

taken cognizance of offences under section 341, 323, 504/ 34 of the Indian Penal Code.

Short fact of the case is that initially on the part of opposite party no. 2 an F.I.R. vide Runnisaipur P.S. Case No. 189 of 2007 was registered against four named accused persons which includes the name of the petitioner. After registering F.I.R. police thoroughly investigated the case and final report under section 173 was filed on 30.12.2007 recording the case as false and exonerating all the accused persons including the petitioner. After submission of final report notice was issued to the informant and after due hearing the learned Chief Judicial Magistrate by its order dated 23.9.2008 accepted the final report and since no protest petition was filed the case was dropped. After the order of acceptance of the final report the informant preferred a revision vide Cr. Revision No. 8 of 2009 which was finally disposed of on 24.11.2010 and the case was remitted back to the learned Magistrate for passing order afresh after setting aside the order of acceptance of final report. The learned Revisional Court has noticed that the order of acceptance of final report was non speaking. After the case was remitted back the impugned order i.e. order dated 20.4.2011 was passed whereby the learned Magistrate has taken a U -turn and at this juncture he

has taken cognizance of offences and directed for summoning the accused persons and transferred the case to another Magistrate. The said order has been assailed by the petitioner.

At the very outset learned counsel for the petitioner tried to persuade the court that petitioner being an advocate for some of the accused persons of the present case had pursued the case against the informant. He submits that in view of professional steps taken by the petitioner it appears that the informant has falsely implicated the petitioner along with other accused persons. He submits that on perusal of the F.I.R. itself it appears that it was a case of false implication. In the F.I.R. it was alleged that the informant was firstly assaulted and thereafter accused persons snatched golden chain as well as wrist watch. He submits that in any event the order of the cognizance does not specify any reason and as such the same is liable to be set aside. In reply Sri Jagdish Prasad has argued that petitioner is relative of other co-accused persons. He further submits that cognizance order was passed against four accused persons whereas petitioner has solely approached this court and informant of the present case is also one of the advocates. He further submits that at the stage of cognizance there is no requirement to pass a detailed order. He submits that since the Revisional Court has quashed the

order accepting final report and remitted back the matter to the learned Magistrate, the learned Magistrate has rightly passed the order of cognizance which is not required to be interfered with.

Learned A.P.P. has also supported learned counsel for the informant.

Besides hearing learned counsel for the parties I have also perused the material available on record. In this case it is a fact that police after thorough investigation has exonerated all the accused persons and has found the case as false. It is also an admitted fact that after submission of final report the informant was given notice and he participated in the proceeding and thereafter the learned Magistrate passed the order accepting the final report. The order accepting final report was assailed by the informant before the Revisional Court. On perusal of the order of the Revisional Court it is evident that the learned Revisional Court has interfered with the order accepting final report mainly on the ground that order accepting final report was non-speaking and thereafter he has remitted back the matter to the learned court below. Meaning thereby that once the matter was remitted back to the learned Magistrate to pass order afresh on the ground that earlier order was non-speaking then after remand it was necessary for the learned Magistrate to succinctly assign reason at

the time of passing order of cognizance. Moreover, once in a police case after thorough investigation police submits final report exonerating accused persons then though the learned Magistrate is competent to pass order differing with the police report it is mandatorily required to assign succinctly reason. On perusal of the order impugned the court is satisfied that no reason has been assigned. Accordingly, in view of the fact that final report was submitted exonerating the petitioner and the learned Magistrate without assigning reason has passed the order of cognizance, the same is required to be set aside. Accordingly, the order of cognizance so far as the petitioner is concerned is hereby set aside.

The petition stands allowed.

(Rakesh Kumar, J)

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