

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26791 of 2016

Arising Out of PS.Case No. -144 Year- 2008 Thana -TAJPUR District- SAMASTIPUR

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1. Jawahar Sah Son of Sri Narayan Sah
2. Sanjay Sah @ Sanjay Kumar, son of Sri Dev Narayan Sah
Both are residents of Village - Kubauli Ram, P.S. - Bangra, District -
Samastipur. Petitioners

Versus

1. The State of Bihar.
2. Rajesh Kumar, son of Sri Jai Narayan Sah, resident of Village - Kubauli
Ram, P.S. Bangra, District - Samastipur. Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Sanjeet Kumar

For the Opposite Party/s : Mr. Sri Rajballabh Singh

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

2 09-08-2016 Heard Sri Sanjeet Kumar, learned counsel for the

petitioners and Sri Rajballabh Singh, learned Addl. Public

Prosecutor.

Two petitioners have approached this Court,
invoking its inherent jurisdiction under Section 482 of the Code of
Criminal Procedure , with a prayer to quash an order dated
15.09.2015 passed by the learned Chief Judicial Magistrate,
Samastipur in Tajpur (Bangra) P.S. Case No.144 of 2008. By the
said order, the learned Chief Judicial Magistrate has taken
cognizance of offence under Section 323 of the Indian Penal Code
and under Section 7 of the Essential Commodities Act.

Short fact of the case is that petitioners were made
accused on the basis of written information given by one Rajesh



Kumar. It has been asserted by learned counsel for the petitioners that the informant of the case is Gotia of the petitioners and maliciously he lodged a case before the police on an allegation that on 12.05.2008, while he was standing, he noticed a tempo coming from the east side on a village road and on enquiry, he learnt that in the said vehicle two drums of Kerosene Oil were loaded. When he tried to intercept, he was slapped by the petitioners and, thereafter, they fled away. After registering the F.I.R., the police investigated the case and submitted final report vide Final Report no.73/08 on 08.09.2008 exonerating both the petitioners. After receipt of final report, whereby the petitioners were exonerated by the police, the learned Chief Judicial Magistrate vide its order dated 15.09.2015 differing with the police report took cognizance of offence under Section 323 of the Indian Penal Code and Section 7 of the Essential Commodities Act.

Learned counsel for the petitioners at the very outset has argued that once the police exonerated the petitioners and submitted final report, the learned Magistrate was not having any jurisdiction to pass order of cognizance differing with the police report. He submits that as per provision of Essential Commodities Act, no court can take cognizance of offence, if



there is no police report. Meaning thereby that if the police exonerates the accused persons and submits final report, the learned Magistrate or special Judge is not competent to take cognizance of offence differing with the police report. To substantiate his submission, he has placed reliance on a single Bench decision reported in **2001(3) PLJR 70 ; Praduman Gupta Vs. State of Bihar**. He submits that the Single Bench had relied upon a Division Bench decision/Judgment and thereafter has come to the conclusion that if there is no police report, the learned Magistrate or Special Judge is not competent to take cognizance differing with the police report. He further submits that the learned Magistrate has committed further error in passing the impugned order due to the reason that while he was passing order of cognizance differing with the police report, he has not assigned any reason. On the aforesaid ground, a prayer has been made for setting aside the impugned order.

Sri Rajballabh Singh, learned Addl. Public Prosecutor, opposing the prayer of the petitioners, submits that once the order of cognizance is passed, in normal course the Court is required to proceed with the case.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains

that in this case after investigation, the police had submitted final report exonerating the petitioners. Meaning thereby that on record, there was no police report, on the basis of which learned Magistrate was authorized to proceed with the case. Moreover, in a police case, if the police submits final report exonerating the accused persons, in that event the learned Magistrate though competent to differ with the police report and take cognizance of offence, but in such event, it is necessary to assign some reason. This is because of the fact that in a statutory investigation if a report is submitted after conclusion of the investigation exonerating the accused persons, such report may not be treated as waste paper. In that event, while differing with the police report, it is necessary to assign succinctly reason.

On perusal of the impugned order, I do not find any assigned reason. The Court is of the opinion that the impugned order is liable to be set aside. Accordingly, the order dated 15.09.2015 passed by the learned Chief Judicial Magistrate, Samastipur in Tajpur (Bangra) P.S. Case No.144 of 2008 is hereby set aside. The petition stands allowed.

(Rakesh Kumar, J)

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