WEB COPY NOT OFFICIAL

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 14583 of 2016

Arising Out of PS.Case No. -447 Year- 2013 Thana -DALSINGHSARAI District- SAMASTIPUR

==========

1. Shashikant Jha son of Late Nandu Jha, residing of village- Chak Habib, P.S. Bibhutipur, District- Samastipur.
2. Kailash Paswan son of Late Dabbal Paswan
3. Pawan Paswan son of Late Mongay Paswan
4. Anil Paswan son of Late Ram Swarth Paswan
5. Uday Paswan son of Kailash Paswan

Petitioner no. 2 to 5 are residents of Village Shahpur Patori, P.S. Bibhutipur, District- Samastipur.

.... Petitioners

Versus

1. The State of Bihar.
2. Brahmdeo Mahto son of Late Ramkishun Mahto, resident of Village Chak Habib, P.S. Bibhutipur, District- Samastipur.

.... Opposite Parties

==========

Appearance :
For the Petitioner/s : Mr. Uma Kant Shukla
Mr. Shakti Suman Kumar
For the Opposite Party/s : Mr. Nand Kumar, A.P.P.

==========

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 04-10-2016

Heard Sri Uma Kant Shukla, learned counsel assisted by Sri Shakti Suman Kumar, learned counsel for petitioners and Sri Nand Kumar, learned Addl. Public Prosecutor.

2. Five petitioners, who were named as accused in F.I.R. in relation to offence under Sections 120B, 302/34 of the Indian Penal Code, have approached this Court with a prayer to quash an order dated 23-12-2015 passed by learned Addl. Chief Judicial Magistrate, Dalsingsarai (hereinafter referred to as 'Magistrate') in Dalsingsarai P.S. Case No. 447 of 2013. By the said order, the learned Magistrate has

taken cognizance of offence under Sections 120B, 302/34 of the Indian Penal Code against all the F.I.R. named accused persons and directed for issuance of notice against absent accused persons.

3. Short fact of the case is that on the basis of a written complaint filed by opposite party no. 2, an F.I.R. was lodged, vide Dalsingsarai P.S. Case No. 447 of 2013 on 14-12-2013 for offence under Sections 120B, 302/34 of the Indian Penal Code. In the F.I.R., it was alleged that one of the co-accused Rohit Jha had done to death the brother of informant by tightening *gamcha* over his neck. In F.I.R., the informant had suspected hand of petitioner no. 1 namely Shashikant Jha for hatching conspiracy. In respect of remaining petitioners, it was alleged that the informant and his family were apprehending some untoward incident from them. After registering F.I.R., police investigated the case. During investigation, accusation against accused no. 1 in the F.I.R. namely Rohit Jha was found true and as such, Chargesheet No. 50 of 2014 dated 28-02-2014 was submitted, in which, name of accused Rohit Jha was incorporated in column no. 11 and he was sent up for trial. In respect of remaining F.I.R. named accused persons, investigation was kept pending. During further investigation, no sufficient material was collected to show involvement of other F.I.R. named other accused, who are petitioners before this Court and thereafter, they were exonerated by the Investigating Officer and Final Report No. 124 of 2015 dated 27-03-2015 was submitted.

After submission of report, by order dated 23-12-2015, the learned Magistrate took cognizance of offences, as indicated above, which has been assailed in the present petition.

4. Sri Shukla, learned counsel for petitioners submits that on perusal of the impugned order, it appears that the learned Magistrate, without examining the record, has passed order of cognizance. He submits that order impugned is an example of non-application of mind. He submits that the order indicates as if chargesheet was submitted against all the accused persons, whereas, fact remains that petitioners were exonerated by the Investigating Agency and final report was submitted in favour of the petitioners. He further submits that since no material was collected during investigation, petitioners were exonerated and final report was submitted in favour of petitioners, the learned Magistrate, even in case of differing with the police report, was required to assign some reason. However, on perusal of the order impugned, it is evident that the learned Magistrate has proceeded to pass the order as if in this case, petitioners were forwarded as accused and their names were incorporated in column no. 11 of the chargesheet. On aforesaid ground, a prayer has been made to quash the order impugned.

5. Learned Addl. Public Prosecutor has opposed the prayer of petitioners and submits that it was a case, in which, brother of the informant was murdered and petitioners were also arrayed as accused

in the F.I.R. and as such, only on technicality, the order impugned may not be interfered with.

6. Besides hearing, I have also perused the materials on record, including the impugned order as well as F.I.R.

7. In this case, earlier chargesheet as well as final report were brought on record, vide **Annexure – 2** & **3** respectively to the petition. After the order dated 26-09-2016, petitioners have filed supplementary affidavit and by way of supplementary affidavit, petitioners have brought on record certified copy of both the chargesheets i.e. Chargesheet no. 50 of 2014 dated 28-02-2014 and Final Report no. 124 of 2015 dated 27-03-2015. It is true that learned counsel for petitioners has argued that neither in the F.I.R. nor during investigation, any sufficient material was collected and petitioners were required to be exonerated, however; this Court is of the opinion that the order impugned can be examined on its own merit. Before proceeding further, it would be necessary to incorporate the order impugned i.e. order dated 23-12-2015, which is as follows:-

> **"Accused in custody, Rohit Jha has been produced from custody and sent back to jail.**
>
> **Heard and perused record. Perused the F.I.R., charge sheet and case diary.**
>
> **On perusal of above and materials on case record, a prima facie case is made under Sections and against accused persons as mentioned in the F.I.R.**
>
> **Therefore, cognizance is taken as per F.I.R. against accused persons, (1) Rohit Jha (2) Shashikant Jha (3) Kailash Paswan (4) Pawan Paswan (5) Anil Paswan and (6) Udai Paswan u/s – 120B/302/34 I.P.C.**

O/C is directed to issue notice against absent accused persons.

Put up on 06.01.16 for Production/ Appearance."

8. On perusal of the aforesaid order, it appears that the learned Magistrate has passed the order, as if in the case petitioners were also forwarded as accused and their names were incorporated in column no. 11 of the chargesheet, whereas, on perusal of the certified copy of the Final Report No. 124 of 2015 dated 27-03-2015, it is evident that final report was submitted as ***'case untrue against petitioners'***. In view of the final report dated 27-03-2015, it can be inferred that the learned Magistrate, while passing order of cognizance, has not applied its mind nor he examined entire record. If there was report of the police, which was submitted after final investigation, the learned Magistrate was required to examine the same and not to pass order of cognizance, only on the ground that petitioners were named as accused in the F.I.R. Once police after investigation exonerated petitioners, the learned Magistrate, in normal course, was required to pass order of cognizance with assigning succinct reason. In a case, in which, police after investigation submits final report and exonerates accused persons, it is necessary for the learned Magistrate to assign reason, if he proposes to differ with the police report. In the present case, on perusal of the order, it appears that the learned Magistrate at the time of passing order, was even not aware that petitioners were exonerated by the police and in a mechanical manner, order of

cognizance was passed.

9. Accordingly, the order impugned i.e. order dated 23-12-2015 passed by learned Addl. Chief Judicial Magistrate, Dalsingsarai in Dalsingsarai P.S. Case No. 447 of 2013, so far as petitioners are concerned, is hereby set aside and the matter is remitted back to the learned Magistrate to examine the record and pass order afresh. If the Magistrate desires to summon petitioners, he is required to succinctly assign reason(s).

10. With above observation and direction, the petition stands allowed.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.10.2016
Transmission Date	17.10.2016