

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45649 of 2013

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1. Nitesh Kumar Singh @ Nitesh Kumar Son Of Late Mahendra Prasad Singh Resident Of Village Lohara, P.O. Dumari, P.S. Barahiya, District Lakhisarai

.... Petitioner/s

Versus

1. The State Of Bihar
2. Ajay Yadav Son Of Late Gopi Prasad Yadav Resident Of Village- Babu Tola P.S. Banka, District Banka
3. Sanjay Kumar Singh Son Of Name Not Known Resident Of Village-clerk, Nalkup vibhag combined building kachahri campus, Bhagalpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rewti Kant Raman
For the Opposite Party No.2 Mr. Ajay Mukharji
For the Opposite Party No.3 Mr. Raghwendra Kumar
For the State : Mr. Dr. M.K.Gautam (App)

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

4 15-03-2016 Heard this petition for quashing the order dated 5.7.2013 passed by the C.J.M by which he has accepted the final form against Ajay yadav and Sanjay Singh who have not been sent up for trial.

Learned counsel for the petitioner challenge the order in accepting the final form on the ground that no notice has been given to the informant while accepting the final form against the co-accused Ajay Yadav and Sanjay Singh and is submitted that if the Magistrate is accepting the final form notice is required to be served on the informant and has placed reliance upon a decision reported in 2004(4) PLJR S.C. page 193 Gangadhar Janardan Vs. State of Maharastra and others wherein it has been held that the



informant was entitled to a notice and heard at the time of consideration of report under Section 173(2) of the Cr.P.C. The Learned counsel for the opposite party however contended that there is no provision in the Cr.P.C., of giving notice to the informant and hence the Cr.P.C. does not provide any notice to the informant after the submission of the final form or acceptance of the final form by the Magistrate. The learned counsel for the opposite party further contended that there are three exigencies arises at the time of submission of the final form which is left open to the Magistrate the Magistrate can either take cognizance

(i) Against the accused persons against whom the final form submitted or even he has not been sent up.

Or

(ii) May ask for further, investigation of the case by so

Or

(iii) The Magistrate may accept the final form against the accused persons hence it is contended that no notice is required in accepting the final form and has placed reliance upon the decision reported in 2006(1) PLJR. Hence the question for consideration is on the respective submissions of

the parties is whether the notice is required to be given to the informant while accepting the final form after the report under Section 173(2) has been given to the Magistrate.

However, before coming to the decision **relied** it is proper to look into the provisions contained in the Cr.P.C. with regard to cognizable offence. Section 154 provides that with regard to the cognizable offence, 154(2) provides that when the F.I.R. is lodged by the Officer-in-Charge of Police Station then a copy of the information as recorded under Section(1) of Section 154 shall be given forthwith free of cost to the informant. Hence Cr.P.C provides that when an F.I.R., has been lodged by Officer-in-Charge then Officer-in-Charge of Police Station shall give a copy to the informant free of cost. Section 157(2) provides that when an information giver that there are two exigencies provided in the proviso to sub Section 1 of Section 157 as clause (a) and (b) clause a provides that when an information given regarding to the commission of any offence against any person and the case is not of serious nature, the Officer-in-Charge of Police Station need not proceed in person or may depute a subordinate officer the clause(b) provides if it appears to the Officer-in-Charge of Police Station that there is no sufficient ground for entering on the investigation he shall not investigate the case. However if the



Officer-in-Charge of the Police Station is required to proceed under sub clause (b) then he is required to give notice and forthwith notify this informant. Hence notice is required to be given to the informant under proviso(b) to Section 157 Cr.P.C. if the Officer-in-Charge of Police Station proceed not be investigate the case. Section 173(2)(ii) also provides that the Officer-in-Charge also to communicate the action taken by him to the person who first gave information relating to the Commission of offence as provided by the State Government. So Section 173(2) (ii) provides intimation, about the final form submitted under Section 173(2), is to be given to the informant. Hence if we go to the scheme of the provisions for investigation of a cognizable offence, then there is provision for providing copy of the F.I.R., to the informant under Section 154 Cr.P.C., thereafter the intimation is to be given to the informant at the outset at the time of institution of the case, subsequently if the Officer-in-Charge of the Police Station does not want to proceed with the case then he is required to intimate the informant under Section 157 Cr.P.C., and even at the stage of submission of charge-sheet under Section 173(2) when the charge-sheet is submitted the intimation is required to be given to the informant that is if the Officer-in-Charge of the Police Station submit a final form that he is required to be given information to the informant. After submission of charge-

sheet/Final Form Magistrate having three options either to sent the case for further investigation or take cognizance of the offence or accept the Final Form. The two options having been given to the Magistrate either to be accepted take cognizance it shall be prejudicial to the informant even if the Magistrate or for re-investigation it will not be prejudicial to the informant however if the Magistrate is giving to proceed and accepting the final form it may be prejudicial to the informant who has given the information because the F.I.R lodged by the informant is following which purpose to report hence decision reported in 2004 PLJR itself the Hon'ble Supreme Court has taken the view that even when the accepting the final form notice is required to be given to the informant and this view has placed reliance upon decision reported in the earlier Supreme Court decision reported in Supreme Court 1250 which also have said the same view regarding notice required to be given to the informant in the exigency that the final form is given. Learned counsel for the opposite party has placed reliance upon decision reported in 2006 (1) PLJR 2005 however, this decision also given the taking into the consideration the three exigencies this was a case in which the cognizance against whom the final form was accepted and this court held that the Magistrate has jurisdiction to take cognizance against the person even if the final form has been accepted against whom relied upon decision

reported in Kishori Singh gave ratio of decided in this case is not applicable to the facts and circumstances of the case it is not a case for the exigency that is final form is to be accepted against the person against whom the final form have been submitted by the Police Station under Section 173(2) and hence the ratio decided in the case reported in 2000 PLJR is not applicable to the facts and circumstances of the case and hence in the result did not find any merit in the petition and hence this petition is allowed. I find in the submission by learned counsel for the opposite party order passed by the learned Magistrate excepting the final form without notice to the informant is not acceptable and hence the impugned order is hereby set aside.

Having regard to the facts and circumstances of the case final form has been accepted without notice to the informant and hence the order impugned is not sustainable and hence, is hereby set aside.

(Gopal Prasad, J)

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