

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26974 of 2013

Arising Out of PS.Case No. -22 Year- 2010 Thana -NIRMALI District- SUPAUL

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1. Hari Narayan Mahto S/O Ram Lakhan Mahto
2. Manoj Mahto S/O Ram Lakhan Mahto
3. Vikash Kumar Mahto @ Bikas Mahto S/O Shiv Narayan Mahto
4. Meera Devi W/O Shiv Narayan Mahto
5. Shiv Narayan Mahto S/O Ram Lakhan Mahto
All residents of Nirmali, Ward No. 4, P.S.- Nirmali, District-
Supaul

.... Petitioners

Versus

1. The State of Bihar
2. Shiv Shankar Kamat @ Hanuman Kamat S/O Late Ayodhi Kamat,
Resident of Nirmali, Ward No. 3, P.S.- Nirmali, District- Supaul

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Krishna Prasad Singh, Sr. Adv.
Mr. Rakesh Singh, Adv.

For the Opposite Party/s : Mr. Damodar Prasad Tiwary, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

2 21-04-2016 At the very out set, Sri Krishna Prasad Singh,

learned Senior Counsel, who was assisted by Sri Rakesh Singh,

learned counsel for the petitioners, in presence of Sri Damodar
Prasad Tiwary, learned Addl. Public Prosecutor, seeks permission
to withdraw this petition so far petitioner no.5/ Shiv Narayan
Mahto is concerned.

The prayer is allowed.

This petition in respect of petitioner no.5/Shiv
Narayan Mahto stands dismissed as withdrawn.

Heard learned counsel for the petitioners and

learned Addl. Public Prosecutor.

The petitioners, invoking inherent jurisdiction under Section 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 09.04.2012 passed by learned Sub Divisional Judicial Magistrate, Birpur in G.R. No.205/2010 arising out of Nirmali P.S. Case no.22/2010. By the said order, the learned Magistrate has taken cognizance of offence under Sections 420,419, 417 and 149 of the Indian Penal Code against five accused persons, which includes the petitioner nos.1 to 4 and petitioner no.5, whose case has already been dismissed as withdrawn.

It was submitted by learned counsel for the petitioners that the police after registering the F.I.R. investigated the case and after investigation the accusation only against accused Shiv Narayan Mahto , who was arrayed as petitioner no.5 in the present petition, was found true, whereas the case against petitioner nos. 1 to 4 was found untrue and final report was submitted vide final report no.11/2012 dated 29.02.2012. It has been argued that on perusal of the impugned order, it is evident that the learned Magistrate without application of mind has passed order of cognizance, even though the names of petitioner nos.1 to 4 have not been incorporated in Column no.11 of the chargesheet

and they were exonerated by the Investigating Officer. It has been argued that it is true that the learned Magistrate was competent to pass order of cognizance differing with the police report, but in that event it is mandatorily required to assign some reason. By way of referring to impugned order, it has been argued that no reason has been assigned.

Learned Addl. Public Prosecutor has opposed the petition. He submits that it was within the jurisdiction of the learned Magistrate to pass order of cognizance differing with the police report. However, he also accepts that while differing with the police report, reason is required to be assigned.

Besides hearing learned counsel for the parties, I have also perused the materials available on record including the impugned order. On perusal of the impugned order, it is evident that the learned Magistrate has simply stated that against all the accused persons, there are materials in the case diary. The learned Magistrate has not even bothered to refer any paragraph of the case diary. Meaning thereby that the order impugned appears to be a non-speaking assigning no reason.

Accordingly, the order dated 09.04.2012 passed by the learned Sub Divisional Judicial Magistrate, Birpur in G.R. No.205/2010 arising out of Nirmali P.S. Case no.22/2010 in so far

as relates to petitioner nos. 1 to 4 is hereby set aside and the matter is remitted back to the concerned Magistrate to examine the same and pass order afresh. If there is material against the petitioners in the case diary, the learned Magistrate is required to succinctly assign reason for differing with the police report.

The petition stands allowed in respect of petitioner nos. 1 to 4.

(Rakesh Kumar, J)

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