

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.1026 of 2014

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1. Mukesh Paswan Son of Late Devendra Paswan Resident of Village -
Saidpur Ganesh, P.S. Bidupur, District Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Vijay Singh S/o Sakal Singh Chakravarti
3. Manoj Singh S/o Lal Babu Singh
4. Raj Kishore Singh S/o Sakal Singh Chakravarti
5. Ashok Kumar Singh S/o Sakal Singh Chakravarti
6. Lal Babu Singh S/o Late Horil Singh
7. Rajendra Singh S/o Late Saryug Singh Opposite Parties No. 2 to 7
Resident of Village - Saidpur Ganesh, P.S. Bidupur, District Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur
For the Respondent/s : Mr. Ansuiya Jaiswal (App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

4 10-03-2017 Heard learned counsel for the parties.

An order, dated 25.02.2014 passed by the learned Chief
Judicial Magistrate, Vaishali at Hazipur in Complaint Case No.
895 of 2013 has been put to challenge in the present criminal
revision application filed under Section 397 read with Section 401
of the Code of Criminal Procedure, 1973 (hereinafter referred to as
the *Code*).

The main plea which has been taken to assail the
impugned order is that after having received the complaint
petition, the learned Chief Judicial Magistrate had only two



options, viz, either to refer the matter to the police for investigation under Section 156(3) of the Code or to enquire into the allegation himself. The third, what the learned Chief Judicial Magistrate had done is that he sought for an enquiry report from the concerned police station and on the basis of the same, has passed the impugned order, dismissing the complaint petition, which is illegal, according to the petitioner.

The ground taken on behalf of the petitioner is wholly misconceived in view of the clear provision under Section 202 of the Code, which reads thus:-

202. Postponement of issue of process. (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made,--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

On bare read of Section 202 of the Code, it would be evident that any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has



been made over to him under Section 192 of the Code, may, if he thinks fit, postpone the issue of process against the accused, either “inquire into the case himself” or “direct and investigation to be made by the police Officer” or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. Calling for a report by the police Officer by way of enquiry under Section 202 of the Code cannot be said to be wholly illegal.

I do not find any illegality in the impugned order.

This application is, accordingly, dismissed.

ArunKumar/-

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(Chakradhari Sharan Singh, J)

