

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33465 of 2015

Arising Out of PS.Case No. -23 Year- 2012 Thana -DHANSOI District- BUXAR

=====

Manbodh Ram, Son of Late Ram Kawal Ram, resident of Village & Post-
Khochariha, P.S.- Dhansoyi, District- Buxar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Durgawati Devi, Wife of Gupta Sah, Resident of Village + Post+ Police
Station- Dhansoyi, District- Buxar.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Ram Naresh Sharma, Advocate

For the State : Mr. Pranav Kumar, APP

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 08-05-2017 Heard learned counsel for the petitioner and learned
APP for the State.

The present application has been filed for quashing of
the order dated 16.08.2014, passed by the learned CJM, Buxar, in
Dhansoyi P.S. Case No.23 of 2012, whereby the learned CJM
adjourned the matter third time for 07.01.2015 for issuing notice
to the informant for the purposes of passing order on final form
submitted by the investigating agency. It has also been recorded
that the Presiding Officer has been transferred.

Learned counsel for the petitioner confines his prayer
only to the extent that the Final Form was submitted by the
investigating agency in 2012, hence, learned Magistrate should
pass appropriate order on the Final Form.

Considering the nature of order, this Court intends to



pass, there is no need of issuance of notice to the informant opposite party no.2.

The prosecution case is that the informant Durgawati Devi, submitted a written report before the Superintendent of Police, Buxar, to the effect that her daughter namely Guriya Kumari, a student of Class-IX, used to go for taking tuition classes at Dhansoi Market. It is alleged that on 23.03.2012 at 5.00 PM, the co-accused including the petitioner namely Bindhyal Ram Mahabir Ram and the petitioner Manbodh Ram, kidnapped her daughter. The factum of kidnapping was conveyed by a friend of informant's daughter namely Shobha Kumari. Further case of the informant is that the informant went to the house of the petitioner to enquire about her daughter when the father of the petitioner Bindhyachal Ram assured the informant that her daughter will be located within fifteen days. On the basis of the written report of the informant Dhansoi P.S. Case No. 23 of 2012 was registered on 16.04.2012, under sections 366/366A I.P.C. On conclusion of investigation, the police submitted Final Form No.65 of 2012 on 30.09.2012 treating case as a mistake of fact and thereby recommended not to send up the petitioner for trial. But, since then, no order has been passed after the submission of final form by the learned Magistrate. This Court is dismayed to find that final form was submitted by the police in 2012, but till date no order



has been passed, which suggests the casual manner in which the judicial proceeding has been conducted by the learned Sub-Divisional Magistrate, Buxar. If the informant chooses not to appear, then the matter cannot be adjourned for an indefinite period. In such circumstances, the notices may be sent through registered post. Issuance of notice to the informant is mandatory requirement, while accepting the Final Form as has been held in the case of **Minu Kumari and Another Vs. State of Bihar and Others** reported in (2006) 4 Supreme Court Cases 359. Paragraph nos. 12 to 15 read as follows:-

12. The informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of others, the informant would certainly be prejudiced as the First Information Report lodged becomes wholly or partially ineffective. This Court in Bhagwant Singh v. Commnr. of Police held that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. As indicated above, there is no provision in the Code for issue of a notice in that regard.

13. We may add here that the expressions 'charge-sheet' or 'final report' are not used in the Code, but it is understood in Police Manuals of several States containing the Rules and the Regulations to be a report by the police filed under Section 170 of the Code, described as a "charge-sheet". In case of reports sent under Section 169, i.e., where there is no sufficiency of evidence to justify forwarding of a case to a Magistrate, it is termed variously i.e., referred charge, final report or summary. Section 173 in terms does not refer to any notice to be given to raise any protest to the report submitted by the police. Though the notice issued under some of the Police Manuals states it to be a notice



under Section 173 of the Code, though there is nothing in Section 173 specifically providing for such a notice.

14. As decided by this Court in Bhagwant Singh's case (supra), the Magistrate has to give the notice to the informant and provide an opportunity to be heard at the time of consideration of the report. It was noted as follows:-

...the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report....

15. Therefore, the stress is on the issue of notice by the Magistrate at the time of consideration of the report. If the informant is not aware as to when the matter is to be considered, obviously, he cannot be faulted, even if protest petition in reply to the notice issued by the police has been filed belatedly. But as indicated in Bhagwant Singh's case (supra) the right is conferred on the informant and none else.

The aforesaid proposition of law does not mean that the Magistrate can wait for appearance of the informant for an indefinite period.

The impugned order dated 16.08.2014 being formal in nature, hence, the same does not require to be quashed.

In the circumstances, the learned CJM, Buxar, is directed to pass appropriate order on final form after giving due opportunity of hearing to informant within a period of four weeks of receipt or production of a copy of this order.

Accordingly, the writ application is disposed of with the aforesaid direction.

(Dinesh Kumar Singh, J)

Ashwini/-

U		T	
---	--	---	--

