

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5247 of 2017

Arising Out of PS.Case No. -229 Year- 2014 Thana -AURANGABAD TOWN District-
AURANGABAD

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Anup Kumar @ Nepali Gupta, Son of Late Baijnath Prasad, resident of
Dharmshala Road, P.S. Nagar, District- Aurangabad.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Shashank Shekhar, Advocate

For the Opposite Party/s : Mr.J.N. Thakur, APP

For the Informant : Mr. Santosh Kumar Pandey, Advocate

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**
ORAL ORDER

02/ 19-05-2017

Heard learned counsel for the petitioner and

Mr. J.N. Thakur, learned counsel for the State.

The present application has been filed for
quashing the order dated 07.12.2016 passed by learned Additional
Sessions Judge, 1st cum Special Judge, POCSO Act, Aurangabad
in G.R. No. 1442 of 2014/13 of 2014 arising out of Aurangabad
Town P.S. Case No. 229 of 2014, whereby the learned Additional
Sessions Judge has directed for issuance of summons after
differing with the final form and taking cognizance for the
offences under Sections 376D, 504, 506, 120B of the Indian Penal
Code and Sections 4, 8, 10 and 14(1) of the Prevention of Children



from Sexual Offence Act.

The prosecution case would unveil that Khusbu Kumari filed an written report addressed to the Officer-in-Charge of Aurangabad Town Police Station alleging therein that on 10th of July, 2014 at 2.30 P.M. two boys teased her while she was proceeding to her house. The boys travelling on a motorcycle attempted to take her at a lonely place and then both of them assaulted the informant. The informant narrated the incident to her father who made enquiry from both the boys, when they threatened to kidnap the victim. Initially the FIR was registered under Sections 341, 323, 354, 354B, 506, 509/34 of the Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act and subsequently Sections 376, 376(G), 504, 120B IPC and Sections 4, 10, 14(1) of POCSO Act were added. The FIR was registered only against co-accused Ankit Kumar and Vishal @ Golu. Though, on conclusion of the investigation the charge sheet was submitted only against Ankit Kumar and Vishal @ Golu and final form was submitted against the petitioner and others, but differing with the final form and on the basis of the statement of the informant that the petitioner and others also ravished her, processes were directed to be issued after cognizance being taken.



It is well settled view that at the stage of exercise of jurisdiction under Section 190(1)(b) of the Code of Criminal Procedure the Magistrate has three options; either to accept the final form or to differ with the same or to direct for further investigation. In this connection, a useful reference may have to the case of Chandra Babu Alias Moses Versus State through Inspector of Police and others reported in (2015) 8 SCC 774. Paragraph nos. 16 and 17 of the judgment read as:-

“16. We have referred to the aforesaid authorities to reiterate the legal position that a Magistrate can disagree with the police report and take cognizance and issue process and summons to the accused. Thus, the Magistrate has the jurisdiction to ignore the opinion expressed by the investigating officer and independently apply his mind to the facts that have emerged from the investigation.

17. Having stated thus, we may presently proceed to deal with the facet of law where the Magistrate disagrees with the report and on applying his independent mind feels, that there has to be a further investigation and under that circumstance what he is precisely required to do. In this regard, we may usefully refer to a notable passage from a three-Judge Bench decision in **Bhagwant Singh v. Commr. of Police** (1985) 2 SCC 537, which is to the following effect:

“4. Now, when the report forwarded by the officer in charge of a police station to the Magistrate Under Sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process, or (2) he may disagree with the report and drop the proceeding, or (3) he may



direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding, or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process, or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the first information report, the informant would certainly be prejudiced because the first information report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the first information report lodged by him is clearly recognized by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the first information report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are



accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the first information report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of Section 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.”

In view of the above discussion, this Court is not inclined to interfere in the matter at this stage. Accordingly, this application is disposed of with liberty to the petitioner to raise all the contentions at appropriate stage of the proceeding.

(Dinesh Kumar Singh, J)

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