

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.50197 of 2013

Arising Out of PS.Case No. -14 Year- 2012 Thana -PATORI District- SAMASTIPUR

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Yashwant Kumar Singh @ Yashwant Singh Son of Late Rama Shankar Singh,
resident of Village -Rasalpur, P.O.-Rasalpur, P.S.- Patori, Distrit - Samastipur

.... Petitioner

Versus

1. The State Of Bihar
2. Arvind Singh son of Late Ballabh Singh, resident of village- Rasalpur, P.O.-
Rasalpur, P.S.- Patori, District- Samastipur.

.... Opposite Parties.

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Appearance :

For the Petitioner/s	:	Mr. Dhananjay Kumar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For O.P. No. 2	:	Mr. Sunil Kumar, Advocate
		Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-06-2017

Heard Mr. Dhanajay Kumar, learned counsel for the
petitioner, Mr. Jharkhandi Upadhyay, learned Additional Public
Prosecutor for the State and Mr. Sunil Kumar, learned counsel for
the informant/opposite party no. 2.

2. This application under Section 482 of the Code
of Criminal Procedure (for short 'Cr.P.C.') has been filed for
quashing the order dated 05.03.2013 passed by the learned Chief
Judicial Magistrate, Samastipur in Misc. Case No. 5 of 2013,
arising out of Patori P. S. Case No. 14 of 2012, corresponding to



G.R. No. 165 of 2012 whereby the learned Chief Judicial Magistrate has withdrawn Patori Case No. 14 of 2012 from Gram Katchahry after cancelling its jurisdiction and has reviewed his earlier order of cognizance.

3. The aforementioned Patori P. S. Case No. 14 of 2012 was registered on the basis of the written report submitted by opposite party no. 2 Arvind Singh on 21.01.2012. In the written report, it was alleged that when the informant reached his house on 20.01.2012 at 7 p.m., he saw that the petitioner and other accused persons were abusing his mother and calling her to be a *daain*. When the informant protested, they assaulted him by fist. He has further alleged that one Mannu Singh picked up his mobile and one Mithilesh Singh took away Rs.1400/- from his pocket. He has stated that on alarm, Ajit Singh and Hem Narayan Singh reached there and saw the incident. He has stated that he was taken to Primary Health Centre, Mohanpur for treatment. It is alleged that the accused persons threatened the informant/opposite party no. 2 and his mother in various ways. On the basis of the aforementioned written report of the informant, the first information report (for short 'FIR') was registered under Sections 341, 323, 504 and 506/34 of the Indian Penal Code (for short 'IPC').



4. The police investigated the case and on completion of investigation submitted its report under Section 173(2) of the Cr.P.C. in the court of Chief Judicial Magistrate.

5. After taking into consideration the materials available on record, including the report of the police submitted under Section 173(2) of the Cr.P.C., the learned Chief Judicial Magistrate took cognizance of the offence under Sections 341, 323, 504 and 506/34 of the IPC against the accused persons, vide order dated 13.02.2012.

6. Since the offences under which cognizance was taken were triable by a bench of gram katchahry, the learned Chief Judicial Magistrate, vide aforementioned order dated 13.02.2012 passed in Patori P.S. Case No. 14 of 2012, transferred the case to the Gram Panchayat, West Dhanipatti for trial and its disposal.

7. After the aforementioned order dated 13.02.2012 was passed by the learned Chief Judicial Magistrate, the informant filed an application before the learned Chief Judicial Magistrate, Samastipur, which was registered as Misc. Case No.5 of 2013 stating therein that after submission of charge-sheet in Patori P. S. Case No. 14 of 2012, he had made an application to the DIG of Police, Darbhanga for further investigation of the case and



on his application, the matter was further investigated in which the allegations under Section 379 of the IPC and Section 3 and 4 of the Prevention of Witch (Daain) Practice Act, 1999 were found true. The informant prayed in the aforesaid Misc. Case that the order dated 13.02.2012 passed in Patori P. S. Case No. 14 of 2012 be recalled and after quashing the jurisdiction of the Gram Panchayat, cognizance be taken *inter alia* under Section 379 of the IPC and Sections 3 and 4 of the Prevention of Witch (Daain) Practice Act, 1999.

8. It would be evident from the record of aforesaid Misc. that at the instance of the informant, on 05.03.2013, the learned Chief Judicial Magistrate cancelled the jurisdiction of the Gram Panchayat in Patori P. S. Case No. 14 of 2012 and on the basis of the copy of the report as contained in Memo No. 13228 issued by the Superintendent of Police, Samastipur, which was sent to the investigating officer of the case took cognizance of the offence under Sections 341, 323, 379, 504 and 506/34 of the IPC and Section 3 and 4 of the Prevention of Witch (Daain) Practice Act, 1999 and transferred the case to the court of Judicial Magistrate. After having recorded the aforementioned order dated 05.03.2013 in Misc. Case No. 5 of 2013, the learned Chief Judicial



Magistrate once again passed the same order, as passed in Misc. Case No. 5 of 2013 on 05.03.2013, in Patori P. S. Case No. 14 of 2012 on 21.03.2013.

9. Mr. Dhananjay Kumar, learned counsel for the petitioner has submitted that the very registration of Misc. Case No. 5 of 2013 in Patori P. S. Case No. 14 of 2012 was beyond the scheme of the Cr.P.C. and was an abuse of the process of law. He submitted that after institution of the case the police had already investigated the case and submitted its report. There was no further investigation in the matter and only because an application was filed by the informant annexing a copy of communication made by the Superintendent of Police to the investigating officer of the case, the same could not have been treated as a further report in terms of Section 173(8) of the Cr.P.C. He submitted that in the present case, no further investigation was conducted and no information in this regard was ever made to the court. He submitted that though the Chief Judicial Magistrate was well within his jurisdiction to cancel the jurisdiction of the Gram Katchahry as also to cancel and withdraw the case from the jurisdiction of the Gram Panchayat, the manner in which the learned Magistrate has passed the order cannot be justified. He submitted that the subsequent order by which the



learned Magistrate has taken cognizance of the offence *inter alia* under Section 379 of the IPC and Section 3 and 4 of the Prevention of Witch (Daain) Practice Act, 1999 is clearly hit by the provision prescribed under Section 362 of the Cr.P.C.

10. On the other hand, Mr. Sunil Kumar, learned counsel for the informant submitted that since a collusive report was submitted by the police after investigation, the informant approached the DIG of Police by way of filing a representation and on the representation of the informant, the police inquired into the matter and the Superintendent of Police had passed an order which was brought to the notice of the court pursuant to which the learned Chief Judicial Magistrate recalled his earlier order and cancelled the jurisdiction of the Gram Panchayat in order to proceed with the case himself. He submitted that the power to withdraw a case from Gram Katchahry is conferred upon the court under Section 115 of Bihar Panchayat Raj Act, 2006 and, thus, it cannot be said that the order passed by the learned Chief Judicial Magistrate was in any manner hit by Section 362 of the Cr.P.C. He submitted that the court of Magistrate has got power to amend charge at any stage during the ongoing criminal proceeding. Hence, the amendment made in the order taking cognizance is of no consequence.



11. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State has adopted the submissions made by the learned counsel for the informant. In addition to what has been argued by the learned counsel for the informant, he has submitted that simply because the subsequent order of the Superintendent of Police was not in the form of a police report under Section 173(8) of the Cr.P.C., the same cannot be termed as a simple order. He submitted that memo issued by the Superintendent of Police clearly stated that the penal offence under Section 379 of the IPC and Section 3 and 4 of the Prevention of Witch (Daain) Practice Act, 1999 were also made out. He contended that looking at the opinion of the Superintendent of Police, if the learned Chief Judicial Magistrate has recalled his earlier order and withdrew the case from Gram Panchayat, no illegality can be found with the order.

12. I have heard learned counsel for the parties and perused the record.

13. From the pleading of the parties, it would be evident that there is no dispute to the fact that the police report submitted under Section 173(2) of the Cr.P.C. was only for the penal offences under the IPC, which were triable by a Gram



Katchahry. It is also not in dispute that in terms of the provisions prescribed under Section 114 of the Bihar Panchayat Raj Act, 2006, the learned Chief Judicial Magistrate was legally competent to transfer the case to the Gram Katchahry after taking cognizance of the offence. Thus, there was no illegality in the order of the Chief Judicial Magistrate dated 13.02.2012 whereby he had transferred Patori P. S. Case No. 14 of 2012 to the Gram Panchayat.

14. It is true that Section 115 of Bihar Panchayat Raj Act, 2006 confers jurisdiction upon the Chief Judicial Magistrate to withdraw any case pending before the bench of Gram Katchahry. If the Chief Judicial Magistrate is of the opinion that such case ought not to be tried or heard by such bench, for the reasons to be recorded in writing, he may try the case either himself or transfer it to another Magistrate either on his own motion or on information received from any other source. However, the manner in which the learned Chief Judicial Magistrate has passed the order of withdrawal of the case from the bench of Gram Katchahry cannot be countenanced.

15. Learned counsel for the petitioner is right in his submission that filing of Misc. Case No. 5 of 2013 in Patori P. S. Case No. 14 of 2012 was beyond the scheme of Cr.P.C. The role of



an informant is well defined in a criminal case initiated on the basis of the FIR. The informant may assist the prosecutor or incharge of the case in a criminal case initiated on the basis of FIR. His role is limited one. He may also with permission of the court submit written argument after the evidence is closed. However, in a police case, there is no provision to register a Misc. Case after transferring the record of the case to Gram Panchayat and pass orders in that Misc. Case and to further incorporate the same order in the police case after withdrawing the case from the Gram Katchehry and canceling the jurisdiction of Gram Panchayat.

16. What would appear from the record of the present case is that the learned Chief Judicial Magistrate first amended the provisions under which he had taken cognizance in Patori P. S. Case No. 14 of 2012, vide order dated 05.03.2013 on the application filed on behalf of the informant annexing a copy of the some sort of direction issued by the Superintendent of Police and, thereafter, he incorporated the said order in the record of Patori P. S. Case No. 14 of 2012 on 21.03.2013. Such a practice is unknown to law.

17. I also find substance in the argument of the petitioner that in absence of any further report in terms of Section



173(8) of the Cr.P.C., the learned Magistrate could not have modified the order taking cognizance. In this regard, the pleading of the informant that since the Magistrate has got jurisdiction to make amendment in charge, even the order of cognizance can be amended is without any substance. The power is vested in a court to amend or alter charge at any stage prescribed under Section 216 of the Cr.P.C. refer to a stage different from the stage of taking cognizance. There is no such power to amend order of cognizance and add certain sections into the order of cognizance after taking into consideration extraneous material. Of course, the Magistrate may correct a clerical or arithmetical error in exercise of power under Section 362 of the Cr.P.C., but in the present case the learned Magistrate has acted upon some document filed on behalf of the informant, which cannot be termed to be police report / charge-sheet or further report in terms of Section 173(2) or Section 173(8) of the Cr.P.C. for making amendment in the order taking cognizance.

18. Hence, in absence of any further police report, the subsequent order passed by the Magistrate modifying the order of cognizance is patently bad in law.

19. In that view of the matter, the impugned order



dated 05.03.2013 passed in Misc. Case No. 5 of 2013 and the order dated 21.03.2013 passed in Patori P.S. Case No. 14 of 2012 by the learned Chief Judicial Magistrate, Samastipur cannot be sustained. Accordingly, they are set aside. Misc. Case No. 05 of 2013 stands quashed. Consequently, Patori P. S. Case No. 14 of 2012 stands transferred to the Gram Katchehry.

20. The application stands allowed to the extent indicated above.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.07.2017
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