

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32180 of 2016

Arising Out of PS.Case No. -246 Year- 2012 Thana -DALSINGHSARAI District- SAMASTIPUR

- =====
1. Arjun Kumar Son of Ram Laulin Mahto
 2. Ram Laulin Mahto Son of Late Ram Bhajan Mahto
 3. Munni Kumari @ Munni Devi wife of Arjun Kumar
All resident of village – Rashidpur, Rachiyahi, Police Station –
Bachchwara, District – Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar
2. Khub Lal Mahto Son of Late Kashi Mahto, Resident of village – Prem
Barhanda, Police Station – Ujiyarpur, District – Samastipur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Binay Kumar

For the Opposite Party/s : Mr. Sri Jharkhandi Upadhyay

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

ORAL ORDER

02/ 17-04-2017

Heard learned counsel for the petitioners and

learned counsel for the State.

The present application has been filed for quashing the order dated 30.11.2015 passed by learned Additional Chief Judicial Magistrate, Dalsingsarai in Dalsingsarai P.S. Case No. 246 of 2012, whereby differing with the final report processes have been directed to be issued after cognizance being taken for the offences punishable under Sections 302 and 201/34 of the Indian Penal Code.

The prosecution case is that the daughter of the informant was married with petitioner no. 1 in June, 2000 but



thereafter torture was being inflicted. Subsequently, petitioner no. 1 performed second marriage with one Munni Kumari and a female child was born out of the second marriage. On 20.02.2011 the informant went to in-laws house of his daughter but there he came to know that his daughter has been killed and dead body has been disposed of. On conclusion of the investigation the police submitted final form did not sent up the petitioners for trial but differing with the final form the learned ACJM vide order dated 30.11.2015 directed for issuance of process after taking cognizance.

Learned counsel for the petitioners submitted that the mechanical approach of the courts appears from the fact that the opening line of the impugned order reflects “Perused the F.I.R., charge sheet and case diary” whereas petitioners were not charge sheeted rather they were not sent up for trial.

In view of this Court, at the stage of exercising jurisdiction under Section 190(1)(b) of the Code of Criminal Procedure the Magistrate has only to see whether the police report constitutes prima facie case. The impugned order reflects that it has been passed after perusal of the FIR and the case diary. When the final report submitted under Section 173 (2) of the Cr.P.C. the court has three options either to agree with the



police report or to disagree with the police and discharge the accused or to direct for the further investigation. In the present case the court has differed with the police report and took cognizance and such power exists with the Magistrate in exercise of jurisdiction under Section 190(1)(b) of the Cr.P.C. No doubt the learned Magistrate has used the word charge sheet instead of final form but the same may be treated as an irregularity.

It is well settled view that the Magistrate can differ with police report and take cognizance for the offence as has been laid down in 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 settled legal proposition,
this Court finds no infirmity with the impugned order.



Accordingly, this application is disposed with liberty to the petitioners to raise all the contentions at the time of framing charge, if the charge has not been framed as yet.

(Dinesh Kumar Singh, J)

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