

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37422 of 2014

Arising Out of PS.Case No. -8 Year- 2010 Thana -BAUSI District- PURNIA

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1. Md. Manzoor @ Md. Manzoor Alam, Son of Moinuddin,
 2. Md. Mazhrul @ Mazhrul Haque, Son of Mainuddin,
 3. Mainuddin @ Md. Mainuddin, Son of Maniruddin,
 4. Md. Imam, Son of Md. Aabid
 5. SK. Jahangir @ Jahangir Son of Kalimuddin, all are resident of Village - Minapur, P.S. - Baisi, District - Purnea.

.... Petitioner/s

Versus

1. The State of Bihar
2. Samri Devi, Wife of Shib Lal Rai of Village -Mohania, P.S. - Baisi, District - Purnea.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Helal Ahmad, Advocate.
Mr. Faiz Naseem, Advocate.

For the State : Mr. Ajay Kumar No. 1, APP

For the O.P. No. 2 : Mr. B.N.P.Singh, Advocate.
Mr. Ram Shankar Singh, Advocate.
Mr. Jagdish Pd. Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 13-11-2017

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the O.P. No. 2.

2. Petitioners seek quashing of the cognizance order dated 03.08.2012 passed by the learned Chief Judicial Magistrate, Purnea in Baisi P.S.Case No. 08 of 2010 thereby taking cognizance of offence under Sections 323, 341 and 504 of the Indian Penal Code and Section 3(x)(xi) of the SC/ST (Prevention of Atrocities) Act and also the entire criminal proceeding of the case.



3. A brief fact giving rise to the case is that Samri Devi, O.P. No. 2 of this application, filed a complaint case in the court of learned Chief Judicial Magistrate, Purnea against accused persons and the same was forwarded to the police under Section 156(3) Cr.P.C. by the Chief Judicial Magistrate, Purnea. A police case was instituted i.e., Baisi P.S.Case No. 08 of 2010 under Sections 323, 341, 342, 354, 384 and 420 of I.P.C. and Section 3(x)(xi) of the SC/ST (Prevention of Atrocities) Act, alleging therein that accused Md. Mazhul was engaged in a construction work of building at Patna and other accused Sk. Manzoor and his father Mainuddin used to provide labourers to his worksite. The husband of the O.P. No. 2 was also engaged by accused Mazhrul at the labour charge of Rs. 300/- per day and doing the work in two shifts. He worked there for two months but no payment was made, so returned back to the village. Mazhrul promised to pay him his labour charge in the village itself. In village, she made demand of total labour charges amounting to Rs. 13000/- but the accused persons became furious, rebuked and abused O.P. No. 2 and her husband as the complainant belongs to scheduled caste category. They also slapped and forcibly took complainant's thumb impression on blanksheet of paper.

4. With institution of the case, the police commenced investigation in the matter and after investigating the same, submitted



final report finding the allegation false and recommended for instituting a case under Sections 182 and 211 of I.P.C. against the complainant-O.P. No. 2 for giving a false information. The police submitted final report on 28.02.2010 and by order dated 15.06.2010, the learned Chief Judicial Magistrate, Purnea accepted final form and finding the case *prima facie* true under Sections 182 and 211 of I.P.C. against the complainant-O.P. No. 2, took cognizance of offence against her and directed to issue summons for her appearance and transferred the case to the court of the Judicial Magistrate, 1st Class for enquiry and trial.

5. However, after lapse of more than two years, precisely on 23.08.2012, the then learned Chief Judicial Magistrate, Purnea again perused the police report submitted on 28.02.2010, however, disagreeing with the conclusion drawn by the Investigating Officer, took cognizance of offence under Sections 323, 341 and 504 of the I.P.C. and Section 3(x)(xi) of the SC/ST (Prevention of Atrocities) Act against the accused persons and issued summons against them to appear for the commitment of the case to the court of Special Judge.

6. Learned counsel for the petitioners submits that frivolous allegations were levelled by the complainant-O.P. No. 2, however, complainant's husband has not lodged any complaint against the accused persons for the allegation that labour charges of



the complainant's husband were not paid by the accused persons, and finding the allegations false during the course of investigation, the police submitted final form and recommended for prosecuting the complainant under Sections 182 and 211 of I.P.C. Learned counsel further submits that disagreeing with the police report, the Chief Judicial Magistrate, Purnea, accepting the final form, has taken cognizance of offence under Sections 182 and 211 of I.P.C. against the complainant, but surprisingly after lapse of two years, on the basis of same materials, cognizance was taken against the accused persons also. So the Chief Judicial Magistrate, Purnea first perusing the police report took cognizance of offence on 15.06.2010 against the complainant, as recommended by the police, which means after accepting the final form, the learned Chief Judicial Magistrate, Purnea has proceeded further against the complainant and it is not the case that protest petition filed by the complainant, being treated as a complaint, the Magistrate proceeded further for enquiry, he has taken cognizance of the offence against the accused persons on the same police case diary, the learned Chief Judicial Magistrate, Purnea has taken cognizance of offence against them. So the subsequent order taking cognizance dated 23.08.2012 against the accused persons, after accepting the final report dated 15.06.2010, two years back and issuing process against the complainant, having taken cognizance



under Sections 182 and 211 of I.P.C. against her, the subsequent order is contrary to law.

7. Learned counsel appearing on behalf of the O.P. No. 2 submits that the complainant had filed a protest petition also and without giving notice to the complainant, order taking cognizance dated 15.06.2010 was passed, so the Chief Judicial Magistrate has got the jurisdiction in differing with the police report, so cognizance may be taken. Learned counsel has also placed reliance to the case of ***Rajendra Prasad Singh vs. State of Bihar*** reported in ***1991(13) PLJR 179***. He submits that in that case also, police finding the case false instituted non-FIR of the case for prosecuting the informant under Sections 182 and 211 of I.P.C. for lodging a false case against the accused persons and in this case also, a protest petition was filed and treating the same as complaint, proceeded further in the matter and the court had taken cognizance against the accused persons, so cognizance taken against the informant of that case under Sections 182 and 211 of I.P.C. was quashed by the Court and the ratio of that case is applicable in the present case also. However, learned counsel concedes that complainant has not up-till-now challenged the order taking cognizance dated 15.06.2010 under Sections 182 and 211 of I.P.C.

8. Having considered the rival submissions and on



perusal of record, certain facts are admitted in this case. First, the police, after investigation, submitted final form, finding the case lodged by the complainant false, on 28.02.2010 and also recommended for prosecuting the complainant for giving false information under Sections 182 and 211 of I.P.C. relating to offence committed by the accused persons. The learned Chief Judicial Magistrate, Purnea perused the police report on 15.06.2010 and issued process against the complainant for appearance finding *prima facie* case against her under Sections 182 and 211 of I.P.C. while taking cognizance of the offence. This order still has not been challenged by the complainant-O.P. No. 2. It is also very much clear that whether court, after receiving final form, whether issued notice to the informant, which is mandatory requirement for accepting final form. However, as it is submitted by the learned counsel for the O.P. No. 2 that a protest petition was filed but the impugned order dated 23.08.2012 does not disclose that neither any protest petition was filed for being treated as a complaint nor the Magistrate proceeded further in the matter for enquiry rather on the basis of the police report, after lapse of two years since submission of the final form against the accused persons, the court, in a very peculiar situation, has taken cognizance against them, in view of settled principle of law that the Magistrate may differ with the finding of the investigating agency on



the basis of material appearing in the case diary, considering the evidence collected against the accused persons. If *prima facie* evidence is available, the Magistrate, differing with the conclusion of the police, may take cognizance of the offence, but this procedure has not been adopted in the present case, neither protest petition filed by the complainant being treated as a complaint, entering into the enquiry, the learned Chief Judicial Magistrate, Purnea on the basis of the same police report, has taken cognizance against the accused persons also and the said two orders become absurdity. The case instituted by the complainant either may be false or true, but it cannot be in both phase. So in the present case, the complainant is being prosecuted under Sections 182 and 211 of I.P.C. as well as the accused persons are also being proceeded for committing offence under Sections 323, 341, 342, 354, 384 and 420 of I.P.C. and 3(x)(xi) of the SC/ST (Prevention of Atrocities) Act. The cognizance of offence is taken under Section 190 of Cr.P.C., which reads as follows:

“190. Cognizance of offences by Magistrates.-(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section(2), may take cognizance of any offence-

- (a) upon receiving a complaint of facts which constitute such offence’
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such



offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

9. So considering the police report submitted in Baisi P.S.Case No. 8 of 2010, the Magistrate accepted it agreeing with finding of police that the case is false, recommended for prosecution of informant under Sections 182 and 211 of I.P.C., so took cognizance of offence under Sections 182 and 211 of I.P.C. by order dated 15.06.2010; moreover the said order taking cognizance was never challenged by the complainant so it attained finality. Now after lapse of more than two years, again taking cognizance against the accused persons by the impugned order is without jurisdiction once police report was accepted earlier. The Magistrate never entered into inquiry treating the protest petition as complaint rather on same material i.e., the final form submitted by police, took cognizance of offence against the accused persons. The ratio decided in the case of ***Rajendra Prasad Singh*** (supra) does not apply in the present case for the reason that facts are entirely different, in the referred decision cognizance was taken by the Magistrate against accused persons after treating protest petition as complaint and holding the enquiry moreover the informant had first approached the court for quashing the cognizance order taken



against him under Section 182 and 211 of I.P.C.

10. Hence, learned Magistrate has passed impugned order dated 23.08.2012 taking cognizance mechanically oblivious of the fact that more than two years back final form submitted by police was already accepted by his predecessor finding the report correct holding therein false case and took cognizance of offence relating to giving false information by the informant. Either the police report is accepted or disagreed by the Magistrate after its submission, analyzing and finding the conclusion drawn in police report in consonance to evidence collected during investigation or contrary to it. As the police report was already accepted two years back by taking cognizance under Sections 182 and 211 of I.P.C. against the informant, hence the impugned order dated 03.08.2012 passed in Baisi P.S.Case No. 08 of 2010 and subsequent criminal proceeding against the petitioners is hereby quashed. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
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