

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43658 of 2011

Arising Out of PS. Case No.-101 Year-2007 Thana- HASPURA District- Aurangabad

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1. Mahavir Sao, son of Raghunandan Sao.
 2. Tarkeshwar Prasad @ Tarkeshwar Sao , son of Mahavir Sao, both Resident Of Vill.- Tandwa, P.S. + Dist.- Garhwa, (Jharkhand)
 3. Ajay Kumar , son of Jagdish Sao, Resident Of Raja Bagicha (Rafiganj), P.S.- Rafiganj, Dist.- Aurangabad

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Lalan Yadav , son of Late Ram Ishwar Yadav
Resident Of Vill.- Gaganbigha, P.S.- Haspura, Dist.- Aurangabad

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Surendra Prasad Singh

For the Opposite Party/s : Mr. Shailendra Kumar Singh (APP)

Sri Pramod Kumar Singh, Adv.

Sri Durgesh Kumar , Adv.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT

Date : 07-09-2017

Heard Sri Surendra Prasad Singh , learned counsel for the petitioners, Sri Shailendra Kumar Singh, learned Additional Public Prosecutor as well as Sri Pramod Kumar Singh, learned counsel, assisted by Sri Durgesh Kumar, learned counsel for the complainant - informant /opposite party no. 2.

Three petitioners, have approached this court invoking its inherent jurisdiction under section 482 of the Code of Criminal Procedure 1973 (hereinafter referred to as “Cr.P.C.”) with a



prayer to quash an order dated 3.11.2009 passed by learned Sub Divisional Judicial Magistrate, Daudnagar (Aurangabad) [hereinafter referred to as “Magistrate”] in Haspura P.S. Case No. 101 of 2007. By the said order the learned Magistrate differing with the police report, has taken cognizance of offence under Section 364 , 120(B) of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”).

Short fact of the case is that initially, opposite party no. 2 filed a complaint, which was numbered as Complaint Case No. 1339 of 2007 arraying three petitioners as accused on an allegation that all the accused persons had kidnapped his son namely, Binod Yadav. The complaint petition was filed on 29.11.2007 and on the same day learned Chief Judicial Magistrate, Aurangabad referred the matter to Police for registering F.I.R. and investigating the case under section 156(3) of the Cr.P.C. Thereafter , the present F.I.R. vide Haspura P.S. Case No. 101 of 2007 was registered on 18.12.2007 for offence under section 364/120(B) of the IPC against three accused persons, who were arrayed as accused in the complaint petition. During investigation accusation was found false, and as such, a final report i.e. final report no. 10 of 2008 dated 31.1.2008 was submitted . In the final report it was indicated that the complainant -informant had filed



false case only with a view to save his son -Binod Yadav from an another case i.e. Rail P.S. Daltenganj Case No. 41 of 2007 , which was registered on 14.10.2007 for offence under section 407, 408 of the IPC on an allegation that accused- Binod Yadav had fled away with huge amount to the tune of Rs. 6,60000/- , which was collected from market. In the present case besides exonerating the accused persons Police also recommended for filing prosecution against the complainant for offence under section 182 / 211 of the IPC. In the meanwhile , the complainant filed a protest petition. By order dated 3.11.2009 the learned Magistrate differing with the Police report has passed order of cognizance, which has been challenged in the present petition.

Sri Surendra Prasad Singh, learned counsel for the petitioners at the very outset submits that the order impugned is liable to be set aside only on the ground that the learned Magistrate while differing with the Police report has not assigned cogent reason. He submits that it is true that learned Magistrate was well competent to take cognizance even differing with the Police report, but in that event , it was necessary on the part of the learned Magistrate to assign succinctly reason. According to him, save and except referring number of paragraphs i.e. paragraph nos. 16, 18 , 19 of the case diary , no reason has been assigned.



In this case , earlier case diary was called for. Learned counsel for the petitioners has also referred to paragraph nos. 16 , 18 , 19 of the case diary and submits that even on perusal of facts disclosed in those paragraphs no specific case is made out . He submits that in paragraph no. 16 the Police has only recorded re-statement of the informant - complainant. Besides this, it has been argued that the complainant has maliciously filed protest petition. By way of referring to Annexure -2 to the present petition, learned counsel for the petitioners has argued that before filing of the present complaint, petitioner no. 1 had already lodged an F.I.R. vide Rail P.S. Daltenganj Case No. 41 of 2007 on 14.10.2007 for offence under section 407, 408 of the IPC in which it was alleged that son of the complainant of the present case namely Binod Yadav had fled away with huge amount collected from market to the tune of Rs. 660000/-. He submits that after registering FIR , Police investigated the case and during investigation police found accusation against the son of the informant of the present case true, and as such police submitted charge- sheet against son of the complainant of the present case showing him as absconder. In view of the facts and circumstances it has been argued that order impugned is liable to be set aside .



Sri Pramod Kumar Singh, learned counsel appearing on behalf of the informant as well as learned Additional Public Prosecutor have opposed the petition. Sri Singh, learned counsel for the informant submits that there is no apparent error in the impugned order warranting interference. He reiterates that there is no restriction on a Magistrate to pass order of cognizance differing with the Police report and in this case while differing, the learned Magistrate has even referred certain paragraphs of the case diary, which amounts to assigning reason and as such, the order impugned may not be interfered with.

Besides hearing learned counsel for the parties, I have perused the materials available on record. At the time of hearing of the case which has been filed for quashing of order of cognizance, of -course it was not at all required to examine the case diary, but since in this case case diary was called for, I have perused paragraph nos. 16, 18, 19 of the case diary. At the moment, I am not recording any opinion as to whether in view of the facts disclosed in those paragraphs any offence is made out or not, but fact remains that the learned Magistrate while differing with the police report and passing order of cognizance has not recorded cogent reason. The court is of the opinion that if during statutory investigation the investigating agency finds a



case un-true, rather material is collected to show that informant has filed a false case and recommends for prosecution of such informant, in that that event only referring to certain paragraphs of the case diary may not serve the purpose. At that very point it would be necessary for the learned Magistrate to indicate succinctly the reasons for differing with the police report, not only referring certain paragraphs of the case diary. So far submission of learned counsel for the petitioners that petitioner no. 1 had filed an F.I.R. against the son of the informant of the present case is concerned, the court is of the opinion that while hearing a petition under section 482 of the Cr.P.C. that too against order of cognizance, normally such documents enclosed with the petition may not be looked into. However, considering the fact that the learned Magistrate has passed order of cognizance without any cogent reason, on this very point the order impugned is required to be interfered with. Accordingly, the order dated 3.11.2009 passed by learned Magistrate is hereby a set aside.

The petition stands allowed.

However, if the learned Magistrate, before whom final report was submitted, considers the case to be proceeded, it would be necessary for him to assign cogent reason.



With above observation, the petition stands allowed.

(Rakesh Kumar, J)

praful/-

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