

Arising Out of PS.Case No. -106 Year- 2015 Thana -SHAMBHUGANJ District- BANKA

.... Petitioner/s

.... Opposite Party/s

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER



Hence, quashing of both the orders have been prayed for.

It is submitted by the learned counsel for the petitioners that on conclusion of investigation the police submitted final form. Though the petitioners were named in the F.I.R. but they were not sent up for trial, but the processes were directed to be issued against the petitioners, after taking cognizance, by impugned order, differing with final form.

The counsel for the State submits that the Magistrate can take cognizance differing with final form.

Having heard learned counsels for the parties this Court is of the view that the legal proposition is well settled in this regard. On submission of police report under Section 173(2) of Cr. P. C. if the police report suggests that no offence is made out, then the Magistrate has three options either to accept the report or to differ with report, if the Magistrate thinks that there are materials in the report to proceed with then move forward to take cognizance or thereby may direct for further investigation. 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 legal proposition, this Court does not find any infirmity in the impugned order. The order of issuance of process was passed on 01.04.2016, but there is nothing on record to suggest the present stage of the case.

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

(Dinesh Kumar Singh, J)

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