

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28046 of 2015

Arising Out of PS.Case No. -34 Year- 2013 Thana -MADHEPURA District- MADHEPURA

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1. Ajay Kumar Singh, S/o Late Hira Prasad Singh
 2. Anju Devi @ Manju Devi W/o Shri Ajay Kumar Singh Both are Resident of Village Mahua, P.S. Ghailarh, District Madhepura.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Jha

For the Opposite Party/s : Mr. Ambika Bhagat(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 08-05-2017 Heard learned counsels for the petitioners and the State.

The present application has been filed for quashing of the order dated 19.11.2014, passed in Madhepura (Ghailardh) P.S. Case No.34/2013, corresponding to G.R.153/2013, by the learned CJM, Madhepura, whereby the process has been directed to be issued after cognizance being taken, differing with the Final Form under sections 341, 323, 504, 34 of the Indian Penal Code and section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

Prosecution case is that the informant being the headmaster of newly created Primary School, Mahua, Pasehim Tola, Block – Ghailardh, was distributing money under the dress



scheme for students. In the meantime, Mukhia Smt. Manju Devi, petitioner no.2 and her husband, petitioner no.1, came and demanded some share in distribution of money under the said dress scheme. On refusal of the same, they abused by calling caste name and assaulted the informant and took away a bag containing Rs.30000/- from the informant, leading to registration of Madhepura (Ghailardh) P.S. Case No.34/2013, on 26.01.2013, registered under sections 341, 323, 379, 353, 504, 34 I.P.C. and section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. On conclusion of investigation, others were charge-sheeted but the petitioners were not sent up for trial. The learned CJM, Madhepura, vide order dated 19.11.2014, differing with the Final Form directed for issuance of process, after taking cognizance under sections 341, 323, 504/34 I.P.C. and section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

It is submitted by learned counsel for the petitioners that for the occurrence of 23.01.2013, the F.I.R. was registered on 26.01.2013. The petitioners have been falsely implicated in this case since the petitioners protested against the mismanagement of the school by the informant, at earlier point of time. Above all the petitioners were not sent up for trial, but the learned CJM



mechanically directed for issuance of process against them also.

It is well settled legal proposition that when the report under Section 173(2) Cr.P.C. is submitted, the Magistrate has three options, either to accept the report in case of report being final form, then issue notice to the informant or to differ with the final report and take cognizance and or order for further investigation. Reference in this connection may be usefully made to the judgment of the Apex court in the case of Chandra Babu vs. State and others, reported in (2015) 8 S.C.C 774. Paragraph nos. 16 and 17 reads 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.”

This is also settled proposition of law that at the stage of exercising jurisdiction under section 190(1) (b), the Magistrate is not supposed to consider the different versions from the materials submitted by the accused, the Magistrate has only option to consider the FIR and material collected during investigation. A useful reference may be made to the case of **State of Orissa Vs. Devendra Nath Padhi** reported in (2005)1 SCC 568. Paragraph 23 reads as follows :-

“23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

Moreover, the impugned order has been passed on 19.11.2014, but there is nothing on record to suggest the present



stage of the case.

In view of the discussions made above, the present quashing application is disposed, of with a liberty to the petitioner to raise all the contentions at the appropriate stage of proceeding.

(Dinesh Kumar Singh, J)

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