

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32537 of 2016

Arising Out of PS.Case No. -348 Year- 2014 Thana -LAKHISARAI District- LAKHISARAI

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1. Ranjeet Paswan Son of Ramdeo Paswan
 2. Nita Kumar Anand @ Kuku @ Nitin Kumar Anand Son of Sashi Kumar Paswan
 3. Ajabi Paswan Son of Ram Khelawan Paswan, (Rm Khelawan Paswan)
- All are Resident of Village- Khagaur, P.O.- Kuel, R.S. P.S. - Lakhisarai,
District- Lakhisarai

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arbind 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 27.05.2016 passed by learned Chief Judicial Magistrate, Lakhisarai in Lakhisarai P.S. Case No. 348 of 2014, whereby the learned court below differing with the final report/form issued process after cognizance being taken for the offences punishable under Sections 302/34 of the Indian Penal Code against the petitioners.

The prosecution case would unveil that as per the fard-beyan of Mahesh Paswan recorded by S.I. Harishankar Kasyap, Lakhisarai P.S. on 18.06.2014 at 6.15 P.M. at Dr. Himkar



Chitranjan Road, Lakhisarai is that informant along with his brother choukidar Ranjan Paswan (the victim) and relative Dayanand Paswan were going home from the market the petitioners, co-accused Dharamvir Paswan and three unknown persons caught hold of the brother of informant when the informant and his relative Dayanand tried to rescue the victim then petitioner no. 1, Ranjeet Paswan fired causing injury on the left of the head of the victim thereafter co-accused caused injury with pistol on the back of head. Petitioner no. 2, Niten Anand caused injury with pistol on the back of victim thereafter petitioner no. 3, Ajabi Paswan fired at the informant. The victim was taken to hospital where he was declared dead leading to registration of Lakhisarai P.S. Case No. 348 of 2014 on 18.06.2014 under Sections 307, 302/34, 120B of the Indian Penal Code and 27 of the Arms Act.

On conclusion of investigation others were charge sheeted but the petitioners were not sent up for trial. The learned CJM on perusal of the case diary differed with the police report and took cognizance by the impugned order. Hence, the present quashing application.

It is submitted by learned counsel for the petitioners that though the petitioners were named in the FIR but



initially some of the FIR named accused persons and some not named accused persons were charge sheeted. Similarly some others were charge sheeted through supplementary charge sheet but the petitioners were not sent up for trial but differing with the final form the learned Magistrate took cognizance without any, prima facie, case being found.

The informant has not been made party in the present quashing application but the nature this Court intends to pass does not require giving notice to the informant. This Court is also not dealing with merits of accusation as it will prejudice the case of the petitioners.

Though the petitioners were named in the FIR with specific accusation but they were not sent up for trial. The impugned order suggests that the learned Magistrate after going through the materials contained in the police report found, prima facie, case and took cognizance differing with final report.

It is well settled legal position that the Magistrate can differ with the police report if he finds material to proceed against the accused. 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 above settled legal proposition, this Court finds no infirmity with the impugned order. Moreover, there is nothing on record to suggest the present stage of the case.

Hence, this application is disposed of with liberty to the petitioners to raise all contentions at the appropriate stage of proceeding.

(Dinesh Kumar Singh, J)

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