

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1267 of 2017

Arising Out of PS.Case No. -172 Year- 2016 Thana -KOILWAR District- BHOJPUR

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Rana Pratap @ Rana Pratap Kumar, Son of Sri Ram Suresh Singh, Resident
of Village Narayanpur, Police Station Koilwar, in the district of Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Dharmendra Kumar, Son of Ram Binay Rai, Resident of Village
Narayanpur, Police Station Koilwar, in the district of Bhojpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Narayan Sharma, Advocate
For the State : Mr. Sri Pradeep Narain Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

3 28-04-2017 Heard learned senior counsel for the petitioner and
learned counsel for the State.

The present application has been filed for quashing of
the order dated 28.10.2016, passed by the learned CJM, Bhojpur
Ara in Koilwar P.S. Case No.172/2016, whereby, the process has
been directed to be issued after cognizance being taken differing
with the Final Form under sections 341/323/324/504/506/34 of the
Indian Penal Code.

The prosecution case would unveil that the mother of
the informant protested blocking of passage by the accused named
in the F.I.R., including the petitioner. As soon as informant came



out of his house, this petitioner assaulted him causing fracture injury. Co-accused Ravindra Kumar pointed pistol at the informant who fled away from the scene. It is further alleged that when the brothers of the informants Bijendra Kumar and Nagendra Kumars came to his rescue, they were also assaulted. On the basis of above accusation Koilwar P.S. Case No.172/2016 was registered under sections 308, 323, 341, 504, 506/34 of the Indian Penal Code on 12.07.2016. On conclusion of investigation, the co-accused Rabindra Kumar, Amit Kumar, Om Prakash Kumar and Jai Prakash Kumar were charge-sheeted under sections 323, 324, 341, 504, 506/34 of the Indian Penal Code, the petitioner was not sent up for trial but differing with the police report, vide impugned order the learned CJM, directed for issuance of process against the petitioner after taking cognizance. Hence, the present quashing application.

It is submitted by learned senior counsel for the petitioner that mechanically the learned Chief Judicial Magistrate differing with the final form took cognizance, though, there is no specific material collected against the petitioner during investigation. FIR was registered under Sections 323, 341, 308, 504 and 506/34 of the Indian Penal Code. The petitioner was named in the First Information Report with specific accusation of



causing bleeding injury to the informant. Police, though, after conclusion of investigation did not send up the petitioner for trial. However, the learned Chief Judicial Magistrate differing with the Final Form took cognizance of the offences.

This Court does not intend to issue notice to the informant opposite party no.2, in view of the nature of order this court intends to pass. This Court is not inclined to deal with the nature of accusations or detail of the materials collected during investigation, since, it will prejudice the case of the petitioner at the subsequent stage of the proceeding.

It is well settled proposition of law that when a police report is submitted under section 173(2) of the Code of Criminal Procedure, the Magistrate has three options to exercise under section 190(1)(b) of the Code of Criminal Procedure, he can either accept the report or he can differ with it or he can direct for further investigation. At this stage, only the order passed by the Magistrate in exercise of jurisdiction under section 190(1) (b) has to be scrutinized on the parameters of the fact that if there is application of judicial mind or not. The impugned order reflects that the Magistrate after going through the case diary came to the conclusion that the prima facie case is made out against the petitioner. 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 discussions, this Court is not inclined to interfere at this stage.

Accordingly, the 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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