

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12941 of 2016

Arising Out of PS.Case No. -289 Year- 2015 Thana -KESARIA District-
EASTCHAMPARAN(MOTIHARI)

- =====
1. Jitendra Singh Son of Daroga Singh
 2. Ram Pravesh Singh @ Ram Pukar Singh Son of Late Bhuneshwar Singh
 3. Manorma Devi Wife of Madan Singh
 4. Manoj Singh Son of Late Bhuneshwar Singh
 5. Shukanti Devi Wife of Ram Pravesh Singh
 6. Manju Devi Wife of Manoj Singh
 7. Putul Kumari Daughter of Madan Singh
 8. Madan Singh Son of Late Bhuneshwar Singh All are residents of village - Karhan, P.S. Keshariya, District - East Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Ram Pukar Singh Son of Late Lal Babu Singh resident of village - Kuwarpur Lakhna Tola, P.S. Pipra, District - East Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Shankar Shrivastava

For the Opposite Party/s : Mr. Ram Chandra Singh(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 12-04-2017

The present application has been filed for quashing the order dated 08.02.2016 passed in Keshariya P.S. Case No. 289 of 2015 by learned XIth Additional Chief Judicial Magistrate, East Champaran, whereby the processes were directed to be issued after cognizance being taken for the offences punishable under Sections 304B, 120B and 306 of the Indian Penal Code.

It is submitted by learned counsel for the petitioners that petitioners are parents and other family members



of the husband of the victim.

The prosecution case is that the informant's daughter Saroj Kumari was married with Rupesh Kumar in the year 2008. The victim was regularly tortured and assaulted. It is alleged that on 29.10.2015 at about 6:30 P.M. in the evening, the informant received a telephonic information about the death of his daughter. The informant, thereafter went to the matrimonial house of his daughter to find her dead body with burn injuries but none were present there. The informant suspected that his daughter was killed by his son-in-law Rupesh Kumar by causing burn injuries, which led to registration of Keshariya P.S. Case No. 289 of 2015 dated 30.10.2015 against the husband of the daughter of the informant namely Rupesh Kumar.

It is submitted by learned counsel for the petitioners that initial case was not registered against the petitioners and on conclusion of the investigation, the petitioners were not sent up for trial as only Rupesh Kumar, the husband of the victim was charge-sheeted for the offences under Section 306 of the Indian Penal Code. Subsequently Complaint Case No. 2469 of 2015 was filed by the informant on 05.11.2015 levelling accusation against the petitioners also, for the offences punishable under Sections 498A, 304B, 384, 120B/34 of the Indian Penal



Code, but the said complaint could not get registered as an F.I.R since the present F.I.R. was already registered. Thereafter protest-cum-complaint as contained in Annexure-4 was filed on 22.01.2016. There also the petitioners were named in accused column. Hence, it is submitted on behalf of the petitioners that processes were issued against the petitioners mechanically without appreciating the facts that petitioners were neither named in the First Information Report nor they were sent up for trial.

Mr. J.N. Thakur, learned counsel for the State submits that after finding prima facie case, the Court below took cognizance against the petitioners.

Considering the rival submissions of the parties, this Court is of the view that at the stage of exercising jurisdiction under Section 190(1)(b) of the Cr.P.C, the Court has only to see whether a prima facie case is being made out, for the purpose of taking cognizance. The impugned order reflects that learned Magistrate has passed the impugned order after perusing the case diary and other materials available on the record including the charge-sheet as well as the protest petition.

It is a well settled legal proposition that a Magistrate can disagree with the police report and take cognizance, as has been held in the case of **Chandra Babu versus**



State through Inspector of Police and Others, reported in

(2015) 8 SCC. Paragraph Nos. 16 and 17 reads as follows:-

“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, which is to the following effect : (SCC pp. 541-43, para 4).

“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.”

Hence, coming to the present case under



consideration, this Court does not find any infirmity in the order impugned. A meticulous roving enquiry is not required at the stage of exercise of jurisdiction under Section 190(1)(a) of the Cr.P.C. At the stage of Section 190(1)(a) of the Code of Criminal Procedure, the Magistrate has power to differ with the police report.

Moreover, the impugned order was passed on 08.02.2016 and there is nothing on record to suggest the present stage of the case.

In the circumstances, this Court is not inclined to interfere.

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

(Dinesh Kumar Singh, J)

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