

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11866 of 2015

Arising Out of PS.Case No. -101 Year- 2013 Thana -BHEJA District- MADHUBANI

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1. Indramani Rai Son of Shiv Shankar Rai R/o Mohalla Karhara, P.O. Chunni, P.S. Bheja, District Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Arjun Kumar Rai Son of Nunu Rai R/o Village Karhara, P.O. Chunni Police Station Bheja, District Madhubani.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prafull Chandra Jha, Adv

For the Opposite Party/s : Mr. J.N. Thakur (App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 25-04-2017 Heard learned counsel for the petitioner and Mr. J.N. Thakur, learned APP for the State.

The present application has been filed for quashing the order dated 11.12.2014 passed by learned 1st Additional Sessions Judge cum Special Judge, Madhubani in Bheja P.S. Case No. 101 of 2013 G.R. 1388 of 2013, whereby process has been issued after cognizance being taken for the offences punishable under Sections 376, 341, 504 of the Indian Penal Code and Section 4 of the POCSO Act.

The prosecution case is that on 11.10.2013, when the 16 years old sister of the informant went to throw cow dung, the petitioner made an attempt to outrage her modesty leading to registration of Bheja P.S. Case No. 101 of 2013, G.R. No. 1388 of 2013 for the offences punishable under Sections 376/511, 323, 341, 504,



506/34 of the Indian Penal Code and Section 4 of the POCSO Act.

On conclusion of investigation, the final report (charge-sheet) was submitted for the offences punishable under sections 341, 354, 504, 506 of the Indian Penal Code. Subsequently, the learned 1st Additional Sessions Judge cum Special Judge, Madhubani vide order dated 11.12.2014, directed for issuance of process after cognizance being taken under sections 376, 341 and 504 of the Indian Penal Code and section 4 of the POCSO Act.

Learned counsel for the petitioner submits that the FIR suggests that there is accusation of attempting to outrage the modesty of the sister of the informant. At the initial stage of investigation, it was found that the accusation has been maliciously levelled in the background of petty dispute between the parties, but subsequently, on the direction of the supervising officer, the statement of the victim was recorded under section 164 of the Cr.P.C. precisely after one and a half month of registration of the FIR, wherein, the victim girl alleged in her statement that she was raped by the accused. Whereas in the F.I.R., it was alleged by the informant that the petitioner tried to outrage the modesty of his sister. The accusation of rape has not been found true during investigation as a result charge-sheet was submitted for the offences punishable under sections 323, 341, 504, 506/34 and 354 of the Indian Penal Code but differing with the police report, cognizance has also been taken for offence under Section 376 of the Indian Penal Code.



Considering the fact that at the stage of exercise of jurisdiction under Section 190(1)(b) of the Code of Criminal Procedure, the court has to only see that materials collected during investigation and the documents submitted before the court along with police report under Section 173(2) of the Cr.P.C, constitute, *prima facie*, offence. So far as the power of the magistrate differing with the police report is concerned, it is well settled legal proposition that the Court can differ with the report of the police and take cognizance or accept the police report or direct for further investigation, as has been held by 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 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 settled legal principle, this Court is not inclined to interfere with the impugned order. This court is not considering the nature of accusation and the materials collected during investigation since it will prejudice the case of the petitioner at the subsequent stage of proceeding.

In the circumstances, this application is disposed of with liberty to the petitioner to raise all the contentions at the appropriate stage of proceeding.

(Dinesh Kumar Singh, J)

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