

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.316 of 2016

Arising Out of PS.Case No. -289 Year- 2014 Thana -BUXAR COMPLAINT CASE District-
BUXAR

- =====
1. Krishna Kant Rai
 2. Shambhu Sharan Rai @ Daujee
 3. Ranjan Kumar Rai
 4. Uma Kant Rai All sons of Late Ganga Prasad Rai, resident of Village-
Khocharihan, P.S.- Dhansoi, District- Buxar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ramayan Singh Son of Late Parahu Singh, resident of Village-
Khocharihan, P.O. & P.S. Dhaansoi, District- Buxar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manohar Prasad Singh, Advocate
For the Opposite Party/s : Mr. Uday Pratap Singh, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 17-04-2017 Heard learned counsel for the petitioner and the State.

The present application has been filed for quashing the order dated 2.9.2015 passed by the learned judicial Magistrate Ist Class, Buxar in Complaint Case no. 289 C of 2014 whereby process has been directed to be issued against the petitioners on the basis of protest-cum-complaint after cognizance being taken for the offences under section 379 of IPC.

The prosecution case would unveil that the informant O.P. No. 2 submitted a written report before the Officer Incharge of Dhansoi Police station to the effect that the petitioners reaped



the purchased land of the informant appertaining to Khata No. 62 Plot No. 531 and 549, leading to registration of Dhansoi P.S. Case No. 10 of 2011 under sections 379/34 of the Indian Penal Code.

On conclusion of investigation, the police submitted final form treating it as a civil nature of dispute vide Final Form No. 27 of 2011 dated 31.3.2011, as contained in Annexure 4, and the same was accepted. Consequently, the protest-cum-complaint was filed and in support of the complaint, the complainant was examined on Solemn Affirmation and statements of two enquiry witnesses were recorded and on the basis of the same, vide order dated 2.9.2015 the learned Judicial Magistrate Ist Class, Buxar, directed for issuance of process against the petitioner after cognizance being taken under section 379/34 IPC, which is under challenge in the present proceeding.

The word 'cognizance' has not been defined in the Code of Criminal Procedure but it has a definite import as has been held in the case of S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. and Ors. (2008) 2 Supreme Court Cases 492. Paragraph 19 reads as follows:

“19. The expression “cognizance” has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic



significance in criminal law. It merely means “become aware of” and when used with reference to a Court or a Judge, it connotes “to take notice of judicially”. It indicates the point when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.”

At the stage of section 190(1)(a) of the Cr.P.C., the Magistrate is mainly concerned with the allegation levelled in the complaint or the evidence led in support of the same by way of solemn affirmation of the complainant or the statement of enquiry witnesses to come to a satisfaction that prima facie case is made out, as has been held in the case of U.P. Pollution Control Board Vs. Dr. Bhupendra Kumar Modi and Anr. (2009) 2 Supreme Court Cases 147. Paragraph 23 reads as follows:

“23. It is settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused.”

In the present case, from perusal of the impugned order, it appears that after considering the accusation in the complaint, solemn affirmation of the complainant and the



statements of two enquiry witnesses, the process has been directed to be issued.

The summon is a process issued by the court calling upon a person to appear before the court. It is used for the purpose of ensuring presence of the accused as his legal obligation before the Magistrate to respond to the violation of law. Section 204 Cr.P.C. does not mandate the Magistrate to expressly state the reasons for issuance of summons but at the same time, the order must reflect that the Magistrate has applied his judicial mind while issuing process. At the stage of exercising jurisdiction under section 190(1)(a) Cr.P.C., the Magistrate is only required to apply his mind only with regard to making out of the prima facie case. Meaningful reference may be made in this regard to the case of Sonu Gupta Vs. Deepak Gupta and Ors. 2015 (2) PLJR (SC) 321. Paragraph no.7 of the same reads as follows:-

“Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind



only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.”

Section 190 Cr.P.C. envisages three eventualities in which the Magistrate of first class and any Magistrate of second class specially empowered in this behalf under sub-section (2), may take cognizance (a) upon receiving a complaint of facts which constitutes such offence, (b) upon a police report of such facts and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Section 190 Cr.P.C. reads as follows:

“190.Cognizance of offences by Magistrates.- (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence -

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;



(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”

A careful perusal of the above provision clearly suggests that mere submission of final form or acceptance of it does not preclude the Magistrate to exercise his discretion of taking cognizance under section 190(1)(a) on the basis of protest-cum-complaint. The various eventualities on submission of final form by the investigating agency under section 173(2) Cr.P.C. as has been envisaged in the case of Chandra Babu alias Moses Vs. State through Inspector of Police and Others (2015) 8 Supreme Court Cases 774. Paragraph nos. 17 and 18 read as follows:

“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 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:-

“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 recognised 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 [pic]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.”

18. Relying on the said paragraph, a two-Judge Bench in *Vinay Tyagi v. Irshad Ali*, has opined



thus:-

“37. In some judgments of this Court, a view has been advanced, [amongst others in *Reeta Nag v. State of W.B*, *Ram Naresh Prasad v. State of Jharkhand* and *Randhir Singh Rana v. State (Delhi Admn.)*] that a Magistrate cannot suo motu direct further investigation under Section 173(8) of the Code or direct reinvestigation into a case on account of the bar contained in Section 167(2) of the Code, and that a Magistrate could direct filing of a charge-sheet where the police submits a report that no case had been made out for sending up an accused for trial. The gist of the view taken in these cases is that a Magistrate cannot direct reinvestigation and cannot suo motu direct further investigation.

38. However, having given our considered thought to the principles stated in these judgments, we are of the view that the Magistrate before whom a report under Section 173(2) of the Code is filed, is empowered in law to direct “further investigation” and require the police to submit a further or a supplementary report. A three-Judge Bench of this Court in *Bhagwant Singh* has, in no uncertain terms, stated that principle, as aforenoticed.

39. The contrary view taken by the Court in *Reeta Nag* and *Randhir Singh* do not consider the view of this Court expressed in *Bhagwant Singh*. The decision of the Court in *Bhagwant Singh* in regard to the issue in hand cannot be termed as an



obiter. The ambit and scope of the power of a Magistrate in terms of Section 173 of the Code was squarely debated before that Court and the three-Judge Bench concluded as aforenoticed. Similar views having been taken by different Benches of this Court while following Bhagwant Singh, are thus squarely in line with the doctrine of precedent. To some extent, the view expressed in Reeta Nag, Ram Naresh and Randhir Singh, besides being different on facts, would have to be examined in light of the principle of stare decisis.”

It is submitted by learned counsel for the petitioners that no prima facie case is made out. The accusation has been levelled in the background of serious land dispute. It is well settled view that at the stage of exercising jurisdiction under section 190 of the Code, the Magistrate is not required to consider the defence of the accused or the material supplied by the accused. Useful reference can be made to the case of State of Orissa Vs. Devendra Nath Padhi (2005) 1 Supreme Court Cases 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.”

The impugned order suggests that the learned Magistrate after perusing the records S.A. of the complainant and the statement of two enquiry witnesses has come to a conclusion that prima facie, case is made out under section 379 I.P.C.

Hence, in view of the discussions made above, at this stage, this Court is not inclined to interfere. The present quashing 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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