

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.3228 of 2015

Arising Out of PS.Case No. -76 Year- 2009 Thana -KAKO District- JEHANABAD

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Renu Kumari Wife of Rajeev Kumar resident of Village - Kako Bazar,
Police Station - Kako in the district of Jehanabad.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Adv

For the Opposite Party/s : Mr. Bharat Bhushan (App)

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**

ORAL ORDER

2 24-04-2017

Heard learned counsel for the parties.

The present application has been filed for quashing the order dated 26.05.2010 passed by learned Chief Judicial Magistrate, Jehanabad in Kako P.S. Case No. 76 of 2009, whereby process has been issued after taking cognizance of the offence punishable under Sections 406, 409, 419, 420 and 120(B) of the Indian Penal Code.

Learned counsel for the petitioner submits that the petitioner being Panchayat Mukhia, at the relevant point of time, is named, merely on the basis of suspicion, in the FIR registered for the offences punishable under Sections 406, 409, 419, 420 and 120(B) of the Indian Penal Code. On completion of investigation, the petitioner was not sent up for trial, whereas the Panchayat Rozgar Sevak was chargesheeted



but differing with the final form, the learned Chief Judicial Magistrate, Jehanabad issued process after taking cognizance against the petitioner and other accused persons. The order taking cognizance of the offence has been challenged on the ground that cognizance of offences has been taken against the petitioner despite the fact that the petitioner also was exonerated and not sent up for trial in the Final Report submitted by the police, while accusations were found to be true only against the Panchayat Rozgar Sewak. What has to be decided is whether the Court can differ with the Final Report, wherein the accused has been exonerated, and take cognizance of the offences against such accused.

It is a settled legal proposition that the Magistrate can disagree with the police report and after independently applying his mind to the facts that emerges from the investigation, take cognizance against such accused exonerated in the police report. Reference in this connection may be usefully made to the judgment of 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 reads 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 proposition of law, this Court finds no infirmity in the impugned order.

Moreover the impugned order was passed on 26.05.2010, but there is nothing on record to suggest the present stage of case, hence, this Court is not inclined to interfere.

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

(Dinesh Kumar Singh, J)

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