

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42362 of 2013

Arising Out of PS.Case No. -58 Year- 2007 Thana -NAYA RAM NAGAR District- MUNGER

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Bishwa Mohan Singh son of Late Dev Nandan Prasad Singh, resident of village- Sambho (Sarlahi), P.S.-Sambho, Distt-Begusarai

.... Petitioner/s

Versus

- 1.The State of Bihar
2. Gopal Choudhary son of Vishundeo Choudhary
3. Bishundeo Choudhary son of Late Soti Choudhary
4. Sarojani Devi wife of Vishundeo Choudhary

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No.2, Advocate
For the Opposite Party Nos. 2 to 4 : Mr. Arun Kumar, Advocate
For the State : Mr. Nityanand, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 08-04-2017

Heard learned counsel for the petitioner, learned counsel for the opposite party and learned counsel for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'CrPC') has been filed for quashing of the order dated 13.08.2013 passed by the learned Chief Judicial Magistrate, Munger in Naya Ram Nagar P.S. Case No.58 of 2007 whereby while staying the warrant of arrest and the process issued under Section 83 of the CrPC against the accused persons the investigating agency has been accorded permission to reinvestigate the case.



3. It is submitted by the learned counsel for the petitioner that the learned Magistrate had no jurisdiction to grant permission to re-investigate the case and stay the operation of the order of execution of warrant of arrest (non-bailable) and that process issued under Section 83 of the CrPC against the accused persons.

4. On the other hand, learned counsel for opposite party no.2 to 4 submitted that after investigation of the case was closed, it came to the notice of the investigating officer that prior to the institution of the first information report (for short 'FIR') the oral statement of the victim was recorded by the police of a different police station which disclosed a completely different story than the facts narrated in the FIR. Thus, on coming to know about recording of the earlier version of the victim, the police made an application seeking permission to re-investigate the case which has been allowed vide order dated 13.08.2013. He submitted that while passing the impugned order the learned Magistrate loosely used the word 're-investigation' in place of 'further investigation'. He submitted that basically the learned Magistrate has directed for 'further investigation' and the said part of the order cannot be found fault with. He submitted that considering the sensitivity of the matter, the learned Magistrate has rightly stayed the execution of the warrant and process issued against the accused persons by the court.



5. I have heard rival contentions advanced on behalf of the parties and perused the record carefully.

6. From perusal of the order impugned dated 13.08.2013, I find that in concluding part of the order, the learned Magistrate has observed 'Put up on 16.9.2013 for appearance and result of 'further investigation'. This clearly shows that the learned Magistrate has basically directed/permitted the police for 'further investigation'. Simply because in the opening paragraph of the impugned order the learned Magistrate has used the word 're-investigation', the order impugned cannot be held to be without jurisdiction. However, it is clarified that the investigating agency that had investigated the case shall be required to carry on 'further investigation'. So far as the other point argued by the petitioner in respect of stay of warrant and process are concerned, it is to be noted that the court issued warrant of arrest in order to secure the presence of the accused. The warrant may be issued by the court to the police officer or any other person to execute the same. As per Section 70 of the CrPC warrant so issued remains in force until it is cancelled by the court which issued it, or until it is executed. However, under Section 70 (2) of the CrPC, the Magistrate has all the powers to cancel the order with regard to non-bailable warrant of arrest for any justifiable reason. The Magistrate may even recall the non-bailable warrant issued by him. Here, in the present



case, he has loosely used the word ‘stay’ of non-bailable warrant. As a matter of fact, since the investigating agency itself doubted its earlier report, the learned Magistrate rightly decided not to get the warrant of arrest and process issued against the accused earlier executed and in that view of the matter simply because the word ‘stay’ has been used by the learned Magistrate while passing the impugned order, the same cannot be held to be erroneous in law.

7. In *Vinay Tripathy vs. Irshad Ali @ Deepak and Others [(2013) 5 SCC 762]*, the Hon’ble Supreme Court examined the jurisdiction of the Magistrate to direct for ‘further investigation’ in exercise of power conferred under Section 173(8) of the CrPC it held:

“The power of the Magistrate to direct “further investigation” is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the court, including that of the Magistrate or by the police of its own accord and, for valid reasons would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Section 173(3) to 173(6) would be applicable to



such reports in terms of Section 173(8) of the CrPC.”

8. In the said case, it was also considered, whether a Magistrate can direct for ‘re-investigation’ while dealing with the said issue, the Hon’ble Supreme Court observed:-

“At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the CrPC or even Article 226 of the Constitution of India to direct “further investigation”, “fresh” or “de novo” and even “reinvestigation”. “Fresh”, “de novo” and “reinvestigation” are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

Whether the Magistrate should direct “further investigation” or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct “further investigation” or “reinvestigation”, as the case may be, on the facts of a given case. Where the



Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation.”

9. Keeping in mind the facts of the present case and the ratio laid down by the Hon’ble Supreme Court in the decision noted above, I see no reason to interfere with the order passed by the learned Magistrate.

10. Accordingly, this application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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