

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No 3675 of 2017

Arising Out of PS.Case No. -331 Year- 2015 Thana -PHULWARI District- PATNA

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1. NAZMI @ SHADNA NAZMI @ NAZNI aged about 27 years Daughter of Md. Yehatesham Ahmad, resident of Lal Main Ki Dargah, P.S.- Phulwari Sharif, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Mahamud Ali @ Shaukat Ali Son of Late Hudmat Ali, resident of Lal Maian Ki Dargah, Police Station- Phulwari Sharif, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr Madan Mohan Prasad, Advocate
For the S t a t e : Mr Satyendra Prasad, APP

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CORAM: HONOURABLE MR JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 06-04-2017

Heard learned counsel for the petitioner and learned counsel for the State.

The present application has been filed for quashing the order dated 24.10.2016 passed in Phulwarisharif Police Station Case No 331 of 2015 by learned Judicial Magistrate, 01st Class, Patna whereby the process has been directed to be issued against the petitioner after taking cognizance for the offences punishable under Sections 147, 148, 323, 506, 504/34 of Indian Penal Code.

The prosecution case is that the informant Md. Ali alias Shaukat Ali submitted a written report to the S.H.O., Phulwarisharif on 14.5.2015 to the effect that at 8.00 O'clock on the same day the



informant came to his house from the shop when eleven accused persons including the petitioners came and with intention to kill, assaulted causing injury to Md. Ali Ashraf, Munna and Sarvar Manaubar and threatened to kill. The occurrence took place in the background of tenancy dispute as the informant asked the accused persons to vacate the house in question but they declined to vacate or to make payment of rent. It is also alleged that Yehtesham snatched gold chain of Afzal and Faizal snatched rupees twelve thousand five hundred and a mobile from the informant, leading to registration of Phulwarisharif P.S. Case No. 331 of 2015.

On conclusion of investigation, final form(chargesheet) was submitted under sections 147,148,323,504 and 506/34 IPC against seven accused persons though four accused persons were not sent up for trial including the sister of the petitioner. Consequently, vide order dated 24.10.2016 passed in Phulwarisharif Police Station Case No 331 of 2015 the learned Judicial Magistrate, 01st Class, Patna directed for issuance of summons against the petitioner and others after taking cognizance for the offences under Sections 147, 148, 323, 506, 504/34 of Indian Penal Code.

Learned counsel for the petitioner submits that the accusation has maliciously been levelled in the background of tenancy dispute between the informant and the petitioner's mother whereas the



entire family has been implicated in this case with malicious accusation.

At the stage of exercising jurisdiction under section 190(1)(b) Cr.P.C. the Magistrate has to see that prima facie case is made out. On submission of police report under section 173(2) Cr. P.C., the Magistrate has three options either to accept the police report or differ with it or to direct for further investigation. In this connection useful reference may be made to 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[9], 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.”

The order taking cognizance should only reflect that the



court has applied its judicial mind. The inherent jurisdiction of this court though very wide but has to be exercised very sparingly and very carefully and with caution only when such exercise is justified by three tests namely, (i) to give effect to an order of the court, (ii) to prevent the abuse of the process of the court and (iii) to otherwise secure the ends of justice.

So far as the question of considering the defence version is concerned, it is well settled view that at the stage of taking cognizance, the court has to see only prima facie case. Three Judges bench in the case of State of Orissa Vs. Devendra Nath Padhi (2005) 1 Supreme Court Cases 568 has clearly laid down that the accused has no right to produce any material either at the stage of cognizance or at the stage of even framing charge. Hence, the plea of the petitioner that in the background of tenancy dispute the accusation has been levelled, could not have been considered by learned Magistrate. The Magistrate was not required to see the defence version for exercise of jurisdiction under section 190(1)(b) Cr.P.C. 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.”



A Magistrate while exercising jurisdiction under Section 190(1)(b) Cr. P.C. has one advantage of having police report containing the materials collected during investigation and submitted before the court through the report under section 173(2) Cr.P.C. The same enables the Magistrate to form an opinion about the prima facie case.

In view of discussion made above, at this stage, this Court is not inclined to interfere. The present quashing application is disposed of with liberty to the petitioner to raise all the contentions at the appropriate stage of proceeding.

(Dinesh Kumar Singh, J)

M.E.H./-Anil/

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