

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41406 of 2017

Arising Out of PS.Case No. -296 Year- 2012 Thana -BELAGANJ District- GAYA

=====

Suresh Yadav Son of Late Nanhak Yadav, R/o Village- Korama at present Mukhiya
Bajitpur Panchayat, P.S.- Belaganj, District- Gaya.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Dharendra Kumar Sinha, Advocate.

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-07-2018

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

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'Cr.P.C') has been filed by the
petitioner for quashing the order dated 30.06.2016 passed by the
learned Sessions Judge, Gaya in Cr. Revision No. 44 of 2016 whereby
the revision application preferred against the order dated 30.11.2015
passed by the learned A.C.J.M.-III, Gaya in Belaganj P.S. Case No.
296 of 2012 has been dismissed and the order passed by the learned
A.C.J.M-III, Gaya has been affirmed.

3. The facts of the case, in brief, are that the petitioner was
made one of the named accused in Belaganj P.S. Case No. 296 of
2012 which was instituted for the offences punishable under Sections
147, 149, 341, 323, 325 & 307 of the Indian Penal Code (for short



‘IPC’). On completion of investigation, the police submitted charge-sheet against the accused persons, namely, Alok Yadav, Arvind Yadav, Binod Yadav, Arun Yadav and Rabindra Yadav. As far as the petitioner is concerned, he was not sent up for trial. On receipt of the charge-sheet no. 41 of 2014 dated 31.03.2014, the learned A.C.J.M-III, Gaya took cognizance of the offences punishable under Sections 147, 148, 149, 323, 341, 324, 325 & 307 of the IPC vide order dated 30.11.2015 and summoned the petitioner also along with the charge-sheeted accused persons.

4. Being aggrieved by the order dated 30.11.2015, the petitioner filed a revision application before the Court of Sessions. The revisional court vide impugned order dated 30.06.2016 dismissed the revision application and affirmed the order dated 30.11.2015 passed by the learned A.C.J.M-III, Gaya.

5. Challenging the impugned order dated 30.06.2016 passed by revisional court, learned counsel for the petitioner submitted that the same is erroneous in law as well as on facts. He submitted that the learned A.C.J.M failed to appreciate that on completion of investigation the petitioner was not sent up for trial. He submitted that treating the petitioner also to be one of the charge-sheeted accused, the learned A.C.J.M had summoned him also, which fact would be apparent from perusal of the order dated 30.11.2015. He contended that even the revisional court failed to appreciate that even without



there being any material against the petitioner the learned A.C.J.M had summoned the petitioner along with other charge-sheeted accused persons.

6. Learned counsel appearing for the State, after going through the record, admitted that neither the learned A.C.J.M. nor the revisional court appreciated the fact that final form was submitted against the petitioner.

7. I have heard learned counsel for the parties and perused the record.

8. The order dated 30.11.2015 passed by the learned A.C.J.M-III, Gaya reads as under :-

“This record has been put up before me today for hearing on the point of cognizance. Heard the learned A.P.O. Perused the record. On perusal of the record it appears that the police on conclusion of investigation and having found the alleged occurrence to be true has submitted charge-sheet under Sections 147, 149, 323, 341, 325 & 307 of the IPC against the accused persons as named in column ‘11’ of charge-sheet. Having regard to the FIR, case diary, charge-sheet and entire material available on record that a prima facie case under section 147, 148, 149, 323, 341, 324, 325 & 307 of the IPC is made out against the accused persons. Cognizance of the offences under Sections 147, 148, 149, 323, 341, 324, 325 & 307 of the IPC is taken against the accused persons, namely, Alok Yadav, Suresh Yadav, Binod Yadav, Arbind Yadav, Arun



Yadav and Rabindra Yadav. Office clerk is directed to issue summons to the accused persons as named above. The record is kept in personal file for commitment. Put up on 01.02.2016 for appearance”.

9. The operative part of the impugned order dated 30.06.2016 passed by the revisional court in Revision Case No. 44 of 2016 reads as under :-

“Heard both sides and perused the L.C.R and case diary. From perusal of the case diary, it appears that the witnesses in paras 4, 5 & 6 have supported the occurrence and witness Ashok Sharma in para 6, Rajesh Kumar in para 7 have named the petitioner in the alleged occurrence. From perusal of the injury report of the informant Mahesh Sharma, it appears that he sustained grievous injury. From para 103 of the case diary, it appears that charge-sheet has been submitted against the petitioner. The petitioner is named accused and so I find that there is no irregularity and illegality in the impugned order of the court below”.

10. Thus, from mere perusal of the orders passed by the learned A.C.J.M as also the order passed by the learned Sessions Judge, it would be evident that both the courts presumed the petitioner to be one of the charge-sheeted accused. They failed to appreciate that the petitioner was not sent up for trial.

11. It is well settled position in law that the court of



Magistrate has power to differ with the police report and the findings recorded by the police on completion on investigation would never be binding upon him. However, such power is not to be exercised mechanically without taking into consideration the materials on record. Since the materials on record have not been correctly appreciated by the court below, the order impugned dated 30.06.2016 passed by the learned Sessions Judge, Gaya and the order dated 30.11.2015 passed by the learned A.C.J.M, Gaya in connection Belaganj P.S. Case No. 296 of 2012 are set aside as far as the petitioner is concerned. The matter is remitted back to the concerned court of Magistrate to apply his mind afresh on the basis of materials available on record and pass order in accordance with law.

12. With the aforesaid observation and direction, the application is allowed.

(Ashwani Kumar Singh, J)

Pradeep/Sneha

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	27-07-2018
Transmission Date	27-07-2018

