

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.574 of 2015

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The State Of Bihar

.... Petitioner/s

Versus

Rajendra Prasad @ Rajo Mahto

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 04-09-2018 Suo Motu revision has been initiated vide order dated 16.07.2015 passed in Cr. Misc. No. 5212/2015 arises out of order dated 19.06.2015 passed by the Chief Judicial Magistrate, Nawada in connection with Warsaliganj P.S. Case No. 42/15 (G.R. No. 429/15).

2. Fact in short is that a complaint petition being Complaint Case No. 578/14 under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, was filed, by the complainant Rina Devi.

3. It further appears that the complainant has filed a photocopy of complaint petition before the Superintendent of Police, Nawada in Janta Darbar and requested for lodging of F.I.R. and on that petition, itself, the Superintendent of Police ordered for lodging F.I.R and on that basis Warsaliganj P.S. Case No. 42/15 was registered. However, the Chief Judicial Magistrate, Nawada came to know about the same and vide order dated



19.06.2015 observed that considering the fact that no complaint case was sent by the court of the then Chief Judicial Magistrate rather it was lodged by the order of the Superintendent of Police, Nawada and there is no such provision to lodge the F.I.R on the basis of a complaint case without sending it by the competent court under Section 156(3) Cr.P.C and in complaint case cognizance has already been taken and it is pending in the court of Sub Divisional Judicial Magistrate Nawada and further observed that the law is well established that two cases for the same offence cannot run together and held that the order of Superintendent of Police, Nawada appears to be against the provisions of law and directed the Officer – in-Charge of Warisaliganj Police Station to drop the investigation in Warisaliganj P.S. Case No. 42/15. The aforesaid order of Chief Judicial Magistrate, Nawada is under revision under present Suo Motu revision application.

4. As discussed above, the complaint case was filed earlier before the Chief Judicial Magistrate, Nawada and on that basis Complaint Case No. 578/14 was registered and in the aforesaid complaint case, cognizance has already been taken. However, it is not a case that complaint was sent by the Chief Judicial Magistrate to the concerned police station under Section 156(3) Cr.P.C. for registration of F.I.R rather the fact clearly shows that complainant has approached the Superintendent of



Police, Nawada and Superintendent of Police, Nawada has ordered for registration of F.I.R. under Section 154 of the Cr.P.C. and Section 154 (3) Cr.P.C. provides that any person aggrieved ‘ by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence’, and as such, while exercising the jurisdiction under Section 154(3) Cr.P.C., the Superintendent of Police Nawada has order for registration of F.I.R and on the basis of that Warisaliganj P.S. Case No. 42/15 has already been registered and it was received in the Court of Chief Judicial Magistrate, Nawada on 21.02.2015.

5. Now the question arises as to whether, the Chief Judicial Magistrate is competent to direct for dropping a police case after its registration and answer to the above is once a police case is registered, the Chief Judicial Magistrate has no jurisdiction to direct for dropping of the case. It appears that the Chief Judicial



Magistrate, Nawada was under misconception that as the same has not been sent by him and as such registration of police case is illegal and without jurisdiction. However, learned Chief Judicial Magistrate has failed to consider that the case has not been lodged as per direction of the competent court under Section 156(3) Cr.P.C., whereas, same has been registered under Section 154(3) of Cr.P.C., as the Superintendent of Police received the copy of complaint with a prayer for registration of police case and he sent the same for registration of police case. Hence, learned Chief Judicial Magistrate, Nawada has only option left is to proceed under Section 210 Cr.P.C., which provides as follows:-

“(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject- matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising



out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code”.

6. However, learned Chief Judicial Magistrate instead of proceeding in accordance with Section 210 of Cr.P.C. has directed for dropping the Warisaliganj P.S. Case No. 42/2015, which is perverse and without jurisdiction and once the F.I.R. has been registered, it cannot be dropped at best if any party is aggrieved, he or she may prefer quashing under Section 482 of the Cr.P.C. for quashing of F.I.R. or may move under writ jurisdiction.

7. In such view of the matter, order dated 19.06.2015 is not sustainable in the eye of law and the same is hereby set aside. Learned court below is directed to proceed in accordance with Section 210 of Cr.P.C.

(Vinod Kumar Sinha, J)

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