

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.13720 of 2017

Arising Out of PS.Case No. -238 Year- 2016 Thana -MUZAFFARPUR SADAR District-
MUZAFFARPUR

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Om Prakash Thakur, Son of Nawal Kishore Thakur, R/o-Arijpur, P.S.-Kanti,
District-Muzaffarpur. Petitioner

Versus

The State of Bihar Opposite Party

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Appearance :

For the Petitioner/s : Mr. Krishna Kant Singh, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 02-08-2018

Heard Mr. Krishna Kant Singh, learned counsel for the
petitioner and Mr. Jharkhandi Upadhyay, 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 16.09.2016 passed by the
learned Chief Judicial Magistrate, Muzaffarpur in Muzaffarpur
Sadar P.S. Case No. 238 of 2016 whereby the final form submitted
by the police has been accepted and further cognizance has been
taken against the petitioner for the offences punishable under
Sections 182 and 211 of the Indian Penal Code (for short 'IPC') on
the report of the Investigating Officer of Muzaffarpur Sadar Police



Station.

3. The short facts giving rise to the application is that the petitioner filed a written report before the police stating therein that one Banwari Lal Banka sold 1 acre 6 decimal land appertaining to Khata No. 299, Khesra No. 2590 to his maternal grandmother Pukari Devi. One Basanti Devi, by impersonating someone else as Pukari Devi, got the sale deed executed in her favour of an area admeasuring 45 decimal from Khesra No. 2590 and 19 decimal from Khesra No. 2606 on 04.10.1988, but he was unaware of the said transaction. On 16.04.2016, when he was getting the land of his share measured, Basanti Devi came along with 5-6 persons and used abusive language and threatened to kill him and showed the sale deed.

4. On the basis of the said written report, the police registered the FIR and took up investigation. On completion of investigation, the police submitted final form, vide final report no. 363 of 2016, on 13.06.2016, in the court of Chief Judicial Magistrate, Muzaffarpur holding therein that the allegations made in the FIR were found absolutely false. It was also mentioned in the final report that a separate complaint under Sections 182 and 211 of the IPC is going to be filed before the Court.

5. Mr. Krishna Kant Singh, learned counsel for the



petitioner submitted that on receipt of the police report, learned Chief Judicial Magistrate, vide order dated 08.08.2016, directed for issuance of notice to the petitioner and posted the case on 16.09.2016. In the meantime, the police submitted a petition on 09.08.2016 for proceeding against the petitioner for the offences under Sections 182 and 211 of the IPC. A notice was issued to the petitioner again on 23.08.2016, but the same was never served upon him. Ultimately, vide impugned order dated 16.09.2016, learned Magistrate not only accepted the final report, but also took cognizance of the offences under Sections 182 and 211 of the IPC against the petitioner in the police case instituted by the petitioner against the accused Basanti Devi.

6. He contended that from the perusal of the order-sheet in the police case, it would be evident that the learned Chief Judicial Magistrate accepted the final report in a mechanical manner without judicial application of mind. Simultaneously, he also took cognizance of the offences under Sections 182 and 211 of the IPC against the petitioner. He pleaded that pursuant to the order dated 08.08.2016 or the order dated 23.08.2016, notice was never served upon the petitioner. He urged that in view of the ratio laid down by the Supreme Court in **Bhagwant Singh vs. Commissioner of Police and another [1985 (2) SCC 537]** the Officer-in-charge of the Police



Station was required to communicate the informant about the outcome of investigation. Furthermore, he was also required to supply the informant a copy of the police report forwarded to the Magistrate under Section 173(2) of the Cr.P.C. Likewise, on consideration of the report made by the Officer-in-Charge of the police station under sub-section 2 of Section 173, if the Magistrate was not inclined to take cognizance of the offence and issue process against some of the accused named in the FIR, the informant ought to have been given an opportunity of being heard so that he could have made his submissions to persuade the Magistrate to take cognizance of the offence and issue process against the accused persons named in the police report. He contended that neither the police handed over the copy of the final report submitted in the case nor the court ensured service of notice to the petitioner and mechanically proceeded ahead and accepted the final report and took cognizance of the offences under Sections 182 and 211 of the IPC.

7. Mr. Jharkhandi Upadhyay, learned counsel for the State submitted that though the police, on completion of investigation, had found the case to be false, the Magistrate was not obliged to accept the police report. According to him, it would be evident from the pleading of the petitioner that on 24.08.2016, the petitioner was remanded to judicial custody in connection with a



criminal case and he continued to be in jail in one case or the other till cognizance of the offences under Sections 182 and 211 of IPC was taken and the final report submitted by the police was accepted by the court. He contended that in such circumstances, it was not possible for the court to get the notice served upon the petitioner and, thus, the ratio laid down by the Supreme Court in **Bhagwant Singh (supra)** would not be applicable in the facts of the instant case. He argued that the cognizance has been taken against the petitioner under Sections 182 and 211 of the IPC in view of the fact that the Magistrate not only agreed with the police report but he also formed an opinion that the petitioner had lodged a false complaint.

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

9. I find substance in the submissions made by the learned counsel for the petitioner. The petitioner has brought on record the relevant order-sheet of the court of Chief Judicial Magistrate in connection with Muzaffarpur Sadar P.S Case No. 238 of 2016. From perusal of the same, it would be evident that on 08.08.2016, the police submitted final report holding the accusation made by the petitioner against the sole named accused to be false. On the same date, the learned Chief Judicial Magistrate directed for issuance of notice to the petitioner. Thereafter, on 09.08.2016, the



Investigating Officer of the case submitted a petition along with enclosures with a prayer to proceed against the petitioner under Sections 182 and 211 of the IPC, which was kept on record. On 16.09.2016, in absence of any service report of the notice issued to the petitioner on 08.08.2016, once again, notice was issued to the petitioner, vide order dated 23.08.2016. Subsequently, vide order dated 16.09.2016, the learned Chief Judicial Magistrate while accepting the final report took cognizance of the offences under Sections 182 and 211 of the IPC and summoned the petitioner.

10. It would also reflect from the marginal notes of the order-sheet that though the order was passed on 08.08.2016 for issuance of notice to the informant, actually notice was issued by the office on 23.08.2016. Thus, only after twenty-three days of issuance of notice, in absence of any compliance report, the final report was accepted by the learned Chief Judicial Magistrate and, in the same proceeding, cognizance has been taken for the offences punishable under Sections 182 and 211 of the IPC and the petitioner has been summoned to face trial.

11. In **Bhagwant Singh (supra)**, while highlighting the requirement of opportunity to be given to the informant in the case of final report holding a case to be false the Hon'ble Supreme court observed:-



“ ... 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”.

12. In **Bhagwant Singh (supra)**, a plea was taken 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. However, the Supreme Court on such plea of the respondents observed: *"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.”

13. Thus, it would be apparent that not only a notice has to be served to the informant of the case before accepting the final report and dropping the proceeding by the court of Magistrate, but 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 police report is to be supplied to him. Merely because the petitioner was remanded to judicial custody when the final report was submitted would be no ground to justify non-supply of the police report or non-compliance of the notice. On the contrary, if he was in judicial custody, it was more convenient to serve him the copy of police report as also notice because his whereabouts was known both to the police and the court.

14. Since there is no dispute on facts, this Court has



no difficulty in coming to the conclusion that the order impugned can not be sustained as the same has been passed without adhering to the ratio laid down by the Supreme Court in **Bhagwant Singh (supra)**. There is no justification for non-supply of the police report by the SHO. Similarly, there is no justification for accepting the final report submitted by police and dropping the proceeding without service of notice upon the petitioner.

15. As noted above, in aforestated Sadar P.S. Case No.238 of 2016, the investigating officer submitted a report praying therein to prosecute the petitioner under sections 281 and 211 of the IPC. While accepting the final report on 16.09.2016, the learned Chief Judicial Magistrate took cognizance of the offences under Sections 182 and 211 of the IPC and issued summons to the petitioner fixing 20.10.2016 as the next date and transferred the case to the court of A.C.J.M., Muzaffarpur for disposal. Apparently, the cognizance has been taken in the police case itself and no separate complaint has been registered.

16. For the sake of convenience, the relevant provisions prescribed under section 182 and 211 of the IPC are extracted hereunder:-

“182. False information with intent to cause public servant to use his lawful power to the inquiry of another person.-Whoever gives to



any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant-

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which information is given were known by him, or

(b) to use the lawful power of such public servant to the inquiry or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

211. False charge of offence made with intent to injure.-Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either



description for a term which may extend to seven years, and shall also be liable to fine.”

17. From perusal of the provision prescribed under section 182 of the IPC, it would be manifest that this section makes punishable the positive act of giving false information with intent to cause public servant to use his lawful power to the injury of another person. The essential ingredients of this section are:-

- (i) giving of an information to a public servant.
- (ii) the information must have been known or believed to be false by the giver; and
- (iii) the information must have been given with the intention to cause, or knowing it to be likely that it will cause, such public servant; (a) to do or omit anything which he ought not to do or omit to do if the true facts were known to him; or (b) to use his lawful power to the injury or annoyance of any person.

18. Section 211 of the IPC is distinct offence from that described section 182 of the IPC. The necessary ingredients to constitute false charge of offence made with intent to injury under section 211 of the IPC are:-

- (i) an intention to cause injury to particular person;
- (ii) such injury should have been intended:-



(a) by instituting or causing to be instituted criminal proceedings against that person, or (b) by falsely charging him with having committed an offence.

19. Section 195 of the Cr.P.C. is an exception to the general rule that any person, having knowledge of commission of an offence, made such a law in motion by a complaint, even though he is not presently interested or affected by the offence. It mandates that no Court has jurisdiction to take cognizance of the offences mentioned therein unless there is a complaint in writing required under that section.

20. Section 195 of the Cr.P.C. to the extent the same is relevant is extracted hereunder:-

“195(1) No Court shall take cognizance-

(a)(i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) xxx xxx

(iii) xxx xxx

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both



inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) xxx xxx

(iii) xxx xxx

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate.”

21. From a close look at the provision prescribed under Section 195(1) of the Cr.P.C, it would be evident that there is legal bar to any Court taking cognizance of offences punishable under section 182 of the IPC except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Similarly, there is a legal bar to any Court taking cognizance of the offence punishable under Section 211 of the IPC when such offence is alleged to have been committed in, or in relation to any proceeding in any court except on a complaint in writing of that court or by such officer of the court as may be authorized in that behalf, or by some other court to which that court is subordinate.

22. The provisions prescribed under Section 195 of the Cr.P.C. have been interpreted on more than one occasion by this



Court as also by the Supreme Court and they would show that there is an absolute bar against the court taking cognizance of the offences mentioned therein except in the manner provided thereunder.

23. From a reading of the provision prescribed under Section 195 of the Cr.P.C., it would also be manifest that no cognizance can be taken under sections 182 and 211 of the IPC on police report. A cognizance of these offences can only be taken on written complaint in the manner provided under the provision.

24. Here, in the present case, the learned Chief Judicial Magistrate has not taken cognizance of the offences punishable under section 182 and 211 of the IPC in a separate complaint case on receiving a prosecution report from the investigating officer of the case rather the prosecution report was filed in the police case itself and the cognizance has been taken by the Magistrate in that case at the time of accepting the final form. The manner in which the cognizance of the offences has been taken in the police case on submission of the prosecution report cannot be approved. Furthermore, cognizance of the offence under section 211 of the IPC on the basis of false information given to the police could not have been instituted even by way of a complaint by the investigating officer of the case. The learned Chief Judicial Magistrate was debarred from taking cognizance of the offence



under section 211 of the IPC in absence of a complaint in writing by the Chief Judicial Magistrate himself in view of the provisions prescribed under Section 195 of the Cr.P.C, which mandates that in respect of any offence punishable under Section 211 of the IPC, cognizance could be taken only at the instance of the court in relation to whose proceedings, the same was committed or who finally dealt with that case.

25. Since neither a complaint was filed by the court nor the act complained of by the investigating officer of the case was in relation to proceedings in court, under no circumstance, the court below could have taken cognizance of the offence punishable under section 211 of the IPC.

26. Thus, having regard to the discussions made above, this application is allowed. The impugned order dated 16.09.2016 passed by the learned Chief Judicial Magistrate, Muzaffarpur in Muzaffarpur Sadar P.S. Case No.238 of 2016 whereby the final report submitted by the police has been accepted and cognizance has been taken for the offences under sections 182 and 211 of the IPC is set aside.

27. The matter is remitted back to the jurisdictional court of Magistrate for passing order afresh in accordance with law on the police report submitted in Muzaffarpur Sadar P.S. Case



No.238 of 2016 after giving an opportunity of hearing to the informant. Since the informant is already in possession of the copy of the police report and is fully aware of the proceedings of the case, no notice is required to be issued to him by the jurisdictional Magistrate. He shall appear before him within three weeks from today and file his attendance, thereafter, a date should be fixed for hearing on final report submitted by the police and, on that date, after hearing the parties, the learned Magistrate shall pass appropriate order. The prosecution report submitted by the police shall be kept in abeyance till the passing of the order on the police report. In case, the petitioner fails to appear before the court concerned within three weeks from today, the Jurisdictional Magistrate shall be at liberty to pass order after going through the police report. In that eventuality, he shall also be at liberty to proceed ahead with the prosecution report submitted by the Investigating Officer in accordance with law.

(Ashwani Kumar Singh, J.)

Sanjeet/SkSuman.

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