

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.316 of 2017

Arising Out of PS. Case No.-524 Year-2015 Thana- HAJIPUR SADAR District- Vaishali

Chandrama Ray Son of Late Badal Ray, Resident of Village- Lal Pokhar
Dighi, P.S.- Sadar, District- Vaishali.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Patna
2. The Superintendent of Police District Vaishali at Hajipur.
3. The Officer-in-Charge P.S.- Sadar Hajipur , District-Vaishali Hajipur.
4. Rajendra Ray
5. Chandeshwar Ray, Both Sons at Budhan Ray, Resident of Village- Dighikala
P.S.- Sadar, District- Vaishali.
6. Dilip Kumar S. I. Goraul, P.S.- District- Vaishali.
7. Dilip Kumar S. I. Goraul, P.S.- District- Vaishali.
8. Binod Ray Son of Late Saryug Pd. Ray, Resident of Village- Piroi, P.S.-
Goraul , District- Vaishali.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Adv.
For the Respondent/s : Mr. Md. Irshad, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 16-07-2019

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

2. The petitioner is the complainant in Complaint Case
No. 3678 of 2015 filed in the court of Chief Judicial Magistrate,
Vaishali at Hajipur. In the said complaint, altogether seven persons
were named as accused.

3. Pursuant to the order dated 30.10.2015 passed by the
learned Chief Judicial Magistrate, Vaishali at Hajipur, in exercise



of power conferred under Section 156(3) of the Code of Criminal Procedure (for short Cr.P.C'), the complaint was referred to the police for investigation pursuant to which Hajipur P.S. Case No. 524 of 2015 was instituted on 01.11.2015 under Sections 365, 420, 467 and 120-B read with 34 of the Indian Penal Code.

4. After completion of investigation, the investigating officer found the accusation made by the petitioner to be false and submitted final form on 30.09.2016 vide Final Form No. 275 of 2016. A prosecution report was also submitted against the petitioner under Sections 182 and 211 of the Indian Penal Code on the same day along with the final form. The Investigating Officer opined that the petitioner had deliberately launched a false prosecution.

5. After submission of final form on 30.09.2016 before the jurisdictional Magistrate, the petitioner has filed the present application on 07.03.2017.

6. His grievance is that the order passed by the learned Chief Judicial Magistrate whereby the complaint was sent to the police for investigation was not fully complied with. The complaint was launched against altogether ten accused persons, but the FIR was registered only against five of them and respondent nos. 6 to 10 were not made accused in the FIR.



7. Learned counsel for the petitioner submitted that there is apparent illegality in the action of the police. Hence, the respondents be directed to fully comply with the order passed by the learned Chief Judicial Magistrate and re-investigate the case.

8. On the other hand, learned counsel appearing for the State submitted that while exercising power under Section 156(3) of the Cr.P.C, the learned Chief Judicial Magistrate had referred the complaint to the police for investigation. The whole complaint was, thereafter, treated as FIR. It is immaterial that in the format of the FIR, name of only five persons was mentioned. As a matter of fact, the entire allegations made in the complaint were investigated upon and were found false and, accordingly, a final report was submitted.

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

10. The application filed by the petitioner is thoroughly misconceived. The complaint filed by the petitioner in the court forms part of the FIR. It has rightly been submitted by the learned counsel for the State that it is immaterial that name of only five accused has been mentioned in the format of the FIR.



11. An FIR is not the format in which it is drawn. It is the information, which is given to the police first in point of time, on the basis of which the investigation is taken up.

12. Once the FIR is registered, Section 156 of the Cr.P.C gives statutory power to the police to investigate the offence alleged.

13. After recording the statements of the witnesses under Section 161(3) of the Cr.P.C, examining the relevant documents and other materials, if the police have found the allegations made by the petitioner in the complaint to be false, this Court, while exercising powers under Article 226 of the Constitution of India, would not direct for re-investigation of the case. Moreover, there is no provision in the Cr.P.C for de novo investigation.

14. It is well settled position in law that on completion of investigation, if the police submit their report under Section 173(2) of the Cr.P.C, the jurisdictional Magistrate is not obliged to accept the conclusions arrived at by the police. He can either agree with the police report or agree in part and disagree with the rest or reject the police report and proceed with the case in accordance with law.



15. In sum and substance, it is for the jurisdictional Magistrate to appreciate the materials collected in course of investigation and pass orders in accordance with law.

16. Keeping in mind the discussions made above, I see no merit in this application. It is, accordingly, dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19-07-2019
Transmission Date	19-07-2019

