

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5272 of 2019

Arising Out of PS. Case No.-58 Year-2007 Thana- NAYA RAM NAGAR District- Munger

1. Vishnudeo Chaudhary @ Vishundeo Chaudhary Son of Late Sauti Choudhary
2. Sarojni Devi Wife of Vishnudeo Chaudhary @ Vishundeo Chaudhary
3. Gopal Chaudhary Son of Vishnudeo Chaudhary @ Vishundeo Chaudhary
All are resident of village-Garhi Rampur, P.S-Naya Ram Nagar, Distt.-Munger

... .. Petitioner/s

Versus

1. State Of Bihar
2. Bishwa Mohan Singh Son of Late Deo Nandan Prasad Singh Resident of Village-Samho Sarllahi, P.S.-Samho Sarlahi Distt.-Begusarai

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Arun Kumar, Adv
For the Opposite Party/s	:	Mr.Ratnakar Ambastha, Adv
For the State	:	Mr.Shyam Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 24-09-2019

Heard learned counsel for the parties.

2. The petitioners are accused in Naya Ram Nagar P.S.Case No. 58 of 2007 registered under Sections 302/34 I.P.C. After investigation of the case, the police submitted chargesheet under Section 173 Cr.P.C. showing the petitioners as absconders. By order dated 27.06.2008 (a copy at Annexure-3), the learned Magistrate on the basis of material on the record especially case diary came to the conclusion that prima facie case is made out against the petitioners and accordingly took cognizance under



Section 304B/34 I.P.C. On 13.08.2013, on the prayer of the S.H.O., Naya Ram Nagar Police Station, the learned court below allowed permission to reinvestigate the case. Order dated 13.08.2013 at Annexure-4 was challenged in an application under Section 482 Cr.P.C. in Cr. Misc. No. 42362 of 2013 and a Bench of this Court examined in detail the nature of the order and found that though the Magistrate has no power to direct reinvestigation of the case, however, the spirit of the order was for further investigation of the case for which the Magistrate is empowered under Section 178(3) Cr.P.C. , the Court followed the judgment of the Hon' ble Supreme Court in **Vinay Tripathy Vs. Irshad Ali @ Deepak and Ors**, reported in **(2013)5 SCC 762** wherein it was held that the superior courts may order for reinvestigation of the case in the exceptional circumstances. The application under Section 482 Cr.P.C. was finally dismissed on 08.04.2017 vide order at Annexure-5. Thereafter, the police submitted report after reinvestigation of the case wherein allegation was found to be untrue. A copy of the final form submitted under Section 173 Cr.P.C. after reinvestigation is at Annexure-6. By the impugned order dated 08.10.2018, the learned Magistrate after hearing the parties held that since cognizance has already been taken in the case earlier and the



cognizance order has attained finality, summons have already been issued against the accused. Hence, the only course open to court was to commit the case to the court of sessions as the offence for which cognizance was taken was triable by a court of sessions.

3. Since the criminal court has no power to review its own order hence, there is no merit in submission of learned counsel for the petitioners that the learned court below should have examined the material collected on reinvestigation and should have passed appropriate order either recalling the order of cognizance or otherwise accepting the final form and closing the case. Next submission is that the impugned order suffers from non-application of judicial mind.

4. Considering the fact that conflicting materials are there in the two reports submitted by the police after investigation and trustworthiness of the same cannot be considered at this stage as to which of the material is acceptable. Hence, this application has got no merit.

5. However, the petitioners may raise their grievance before the learned court below at the stage of framing of the charge and the learned court below shall pass a reasoned



order without being prejudiced by the fact that cognizance has already been taken in this case.

6. With the aforesaid observation, this application stands disposed of.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.09.2019
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