

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10163 of 2015

Arising Out of PS. Case No.-55 Year-2010 Thana- MINAPUR District- Muzaffarpur

Md. Ilyas, S/o Pir Mohammad, resident of village - Prasad, P.S. - Minapur,
Dist - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Ali Ahmad, S/o Md. Zabbar Mian, resident of Prasad, P.S. Panapur
under Minapur Police Station - District - Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Anshuman Singh, Advocate
For the O.P. No. 2	:	Mr. Pankaj Kumar Singh, Advocate
For the State	:	Mr. Shyam Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 05-09-2019

Heard the parties.

2. The petitioner is one of the FIR named accused in connection with Minapur P.S. Case No. 55 of 2010 corresponding to Trial No. 4287 of 2015 registered under Sections 302/34 of the Indian Penal Code. The petitioner has challenged the order of cognizance dated 14.12.2013 on the ground that the police had not sent up the petitioner for trial and the learned Magistrate without application of judicial mind in a mechanical manner took cognizance of the offence.

3. Learned counsel for the petitioner submits that though the Magistrate is competent to disagree with the police report, however, once he disagrees with the police report, it must



disclose the materials available on the record for disagreement which is lacking in this case.

4. His next contention is that there is no material in the case diary against the petitioner, rather the witnesses have stated before the police that this was a case of suicide committed by the victim as her affairs with one of the co-accused came to the public and she was feeling humiliated and perturbed. Next contention is that old dispute is going on between the parties and just to pressurize, the petitioner has been falsely implicated in this case.

5. Learned counsel for the petitioner has placed reliance on the judgment of this Court in Navin Kumar @ Nabin Kumar & Anr. vs. State of Bihar & Anr. reported in 2009(4) PLJR 68 for his submission that in Navin Kumar's case, the Magistrate had disagreed with the police report and had referred certain paragraph of the case diary and this Hon'ble Court set aside the impugned order and remitted back the matter to the learned Magistrate to pass fresh order according to law.

6. In this case, final report as "accusation false" against petitioner Md. Iliyas, co-accused Lal Pandit, Md. Islam, Md. Salam, Md. Basir, Md. Azhar, Qeyamuddin and also suspecting accused Md. Taslim was submitted under Section 173 Cr.P.C.



7. The operative portion of the impugned order is being reproduced below:-

“Perused the case diary. From perusal of the C.D., it appears that there are sufficient scope and materials to proceed further under Sections 302/34 of the Indian Penal Code against accused Md. Taslim, Md. Illiyas (petitioner), Lal Pandit, Md. Islam Miyan, Md. Salam, Md. Bashir, Md. Azhar and Qeyamuddin named in the FIR. Accordingly, cognizance of the offences under Sections 302/34 of the Indian Penal Code is taken against the aforesaid accused persons named in the FIR.”

8. The law is well settled that once the Magistrate disagreed with the police report submitted under Section 173 Cr.P.C., it is bound to record reason for disagreement and the reason must be based on material on the record. The learned court below has not assigned any reason for disagreement nor has discussed material on the record.

9. According to FIR, the named accused persons including the petitioner were attempting to outrage the modesty of the sister of the informant on 28.02.2010. Rather the accused persons lifted the victim-girl and on hearing her alarm, the informant along with his father came out. However, the accused persons fled away. The informant identified all the accused persons in the light of torch. On the next day, a village Panchayat



was convened to decide the issue aforesaid. However, except co-accused Md. Taslim, other accused did not appear before the Panchayat. The informant expressed his desire that he would go for Panchayati only if all the accused persons attend the Panchayat. In the subsequent occurrence dated 13.03.2010, at about 10:00 p.m., the sister of the informant had gone to attend the call of nature and the informant and his father heard her cry and went towards her cry and saw that co-accused Md. Taslim and the petitioner were pressing on her neck with a wrapper and co-accused Md. Islam and Md. Sabbir Mian were holding at her hand and leg. When the informant and his father reached there, they had fled away and the victim was found dead.

10. The case diary would reveal that the statement of the father of the informant was never recorded by the police. Some of the witnesses have stated before the police that, in fact, the victim had committed suicide and after commission of suicide false allegation was levelled due to land dispute between the parties. The Supervising Authorities appears to have conducted parallel investigation inasmuch as they recorded statement of the witnesses during course of their supervision which is not permissible in law. The Supervisory Police Officer might have taken over investigation of the case at any stage as empowered under the



Code of Criminal Procedure. However, are not competent to record statement of the witnesses parallel to that of investigation by the Investigating Officer. Thus, the conduct of the police does not appear to be fair enough in not recording the statement of the eyewitness of the occurrence. Moreover, the informant, who claims to be eyewitness, cannot be disbelieved at the stage of cognizance. Trustworthiness of his evidence could be tested only at the stage of trial in the same manner in which statement of other witnesses examined before the police would be tested. There is no evidence that any one is claiming to be eyewitness of the occurrence and he says that the victim committed suicide in his presence. Such evidence could have of equal value to that of the informant, however, only at the stage of trial and not at the stage of cognizance to throttle the case at the threshold. The old enmity cuts both ways. Hence, that cannot be looked into at the stage of cognizance.

11. Since there is conflicting material in the case diary, one supporting the prosecution case and another creating doubt on the prosecution version, in my view, this is a case wherein the trial must be allowed to proceed with. Therefore, only for the reason that the learned Magistrate has not discussed the material in the



case diary, the impugned order need not be set aside as it is not going to cause failure of justice.

12. However, it would be open to the petitioner to raise the issue at the time of framing of the charges and the learned court below shall pass a reasoned order, according to law, without being prejudiced by the order of cognizance or by this order.

13. Accordingly, this application is dismissed.

(Birendra Kumar, J)

Kundan/-

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