

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.2638 of 2017**

Arising Out of PS. Case No.-160 Year-2016 Thana- KARPI District- Jehanabad

Janeshwar Sharma Son of Late Kamal Sharma, Resident of Village- Nath Kharsa, P.S.- Mehendiya, District- Arwal.

... .. Petitioner

Versus

1. The State Of Bihar Through Collector , District-arwal
2. Superintendent of Police, Arwal, District- Arwal.
3. Officer-in- Charge-cum- Station House Officer, Karpi Police Station, District- Arwal.
4. Ablesh Kumar Yadav, A.S.I.-cum- Investigation Officer of Karpi, P.S. Case No. 160/17, District- Arwal
5. Parasuram Sharma, Son of Late Nunu Sharma.
6. Anil Sharma, Son of Late Bishram Sharma.
7. Sunil, Son of Late Parasuram Sharma
8. Krishnamani Devi, Son of Late Bishram Sharma.
9. Nilam Devi, Wife of Sunil Sharma.
10. Lalsa Devi, Wife of Anil Sharma.
11. Shima Kumari, Son of Late Bishram Sharma.
12. Sadhusharan Sharma, Son of Late Govind Sharma.
13. Manoj Sharma,
14. Mukesh Sharma, Both Son of Sadhu Sharan Sharma.
15. Ramnarayan Sharma, Son of Late Ranjit Sharma.
16. Ranju Devi, Wife of Late Kaushal Sharma. Serial No. 5 to 16 are Resident of Village- Puran, P.S.- Karpi, District- Arwal.

... .. Respondents

**Appearance :**

For the Petitioner/s : Mr.Suresh Prasad Bhakta  
For the Respondent/s : Mr.Sheo Shankar Prasad Sc8

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**  
**ORAL JUDGMENT**

**Date : 30-09-2019**

The sole defect pointed out by the Stamp Reporter is ignored.

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for quashing



the final form no.34 of 2017 dated 28.02.2017 submitted by the Assistant Sub-Inspector of Police, who had investigated Karpi P.S. Case No. 160 of 2016 dated 18.10.2016 registered under Sections 420, 467, 468, 447, 380, 504, 147 and 148 of the Indian Penal Code.

3. The contention of the petitioner is that initially a complaint case was filed by the petitioner in the court of Chief Judicial Magistrate vide Complaint Case No. 284 of 2016, which was referred to the police under Section 156(3) of the Code of Criminal Procedure (for short 'Cr.P.C') pursuant to which Karpi P.S. Case No. 160 of 2016 was registered and investigation was taken up. The allegations made in the complaint were quite serious. In the complaint, it was alleged that the accused persons had cheated the petitioner by preparing a forged and fabricated registered sale deed.

4. According to the petitioner, the investigating officer did not investigate the case in a fair and impartial manner and submitted a collusive police report under Section 173(2) of the Cr.P.C vide final report no. 34 of 2017 dated 28.02.2017 holding the case to be of civil dispute.



5. The petitioner has argued that the allegation of preparation of a forged and fabricated registered sale deed, by no stretch of imagination, can be said to be a case of civil dispute.

6. On the basis of the aforesaid submissions, a prayer has been made to set aside the police report submitted under Section 173(2) of the Cr.P.C vide final report no. 34 of 2017.

7. Learned counsel appearing for the State has opposed the prayer made by the petitioner. He has contended that the contentions advanced by the petitioner that the police have submitted a collusive report have no legal basis. The police report submitted before the court is based on the outcome of investigation. The witnesses, whose statements were recorded in course of investigation, have not supported the allegations made in the complaint.

8. He contended that in view of the inspection of the place of occurrence, the statements recorded in course of investigation and the supervision report of the superior police officers, the investigating officer has filed final report in the court.

9. He urged that under any circumstance, the court is not bound by the opinion of the police. In case there are materials to proceed with the case, the court of Magistrate has got jurisdiction to take cognizance of the offence and proceed with the



trial of the accused persons, but it would not be proper for this Court to quash the report submitted by the police after completing the investigation of the case.

10. Having heard the parties and perused the materials on record, I find substance in the submission of the learned counsel for the State. It is well settled position in law that a report submitted under Section 173(2) of the Cr.P.C is not binding on the court. The court of Magistrate may agree with the police report or it may differ with the conclusions arrived at by the police. At the stage of investigation, the court has no say. However, as soon as the investigation is completed and a report is submitted under Section 173(2) of the Cr.P.C, the investigating agency is required to forward to the Magistrate empowered a report in the prescribed format so as to pass order in accordance with law. The Magistrate empowered is not bound by the conclusions arrived at by the police. Before accepting the police report submitted under Section 173(2) of the Cr.P.C, the Magistrate is also required to hear the informant of the case, who sets the machinery of investigation into motion.

11. Instead of appearing before the Magistrate and placing his case before him, the petitioner has chosen to file the instant application for setting aside the police report, which



apparently is not permissible in law in view of not availing the opportunity of hearing before the Magistrate concerned.

12. In the opinion of this Court, at this stage, no case is made out for interfering with the police report by this Court.

13. Accordingly, the application is dismissed.

**(Ashwani Kumar Singh, J)**

Pradeep/-

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