

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14252 of 2015

Arising Out of PS. Case No.-47 Year-2001 Thana- MAHISHI District- Saharsa

The State Of Bihar Through The District Magistrate Saharsa

... .. Petitioner/s

Versus

Md. Ishak Alam S/o Late Abdul Ekrar Ali R/o Pachira P.S. Raniganj, District -
Araria

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Mukeshwar Dayal

For the Opposite Party/s : Mr. Shekhar Kumar Singh

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

7 22-11-2019 Heard Mr. Mukeshwar Dayal, learned counsel for

the petitioner / State and Mr. Shekhar Kumar Singh, learned

counsel for the Opposite Party.

The State of Bihar has challenged the order dated
13.08.2009 passed by the learned Chief Judicial Magistrate,
Saharsa in connection with Mahishi P. S. Case No. 47 of
2001 (G.R. Case No. 762 of 2001), whereby the final report
as "mistake of fact" was accepted by the court below and



against the order dated 19.09.2013 passed by the learned Sessions Judge, Saharsa in Cr. Revision No. 196 of 2013, whereby the order passed by the learned Chief Judicial Magistrate dated 13.08.2009 has been affirmed.

The sole ground urged by Mr. Mukeshwar Dayal, learned counsel for the petitioner / State is that the informant, though was noticed at the time of acceptance of final report as "mistake of fact", but there is no report regarding service of notice on him. On this ground, it has been urged that the order accepting the final report and the revisional order affirming the order of the Magistrate has to be faulted with.

It appears that on the report of the Block Development Officer, Mahisi, a case was instituted against the Opposite Party, who at the relevant time had just retired from the post of Nazir, alleging that he did not hand over the charge at the time of his retirement but much later on 28.09.1989. Since the charge was handed over after about a year of his superannuation, it amounts to an offence which was similar and akin to breach of trust and embezzlement of



government's fund. On the basis of the aforesaid written report, a case was instituted against the Opposite Party under Section 409 of the Indian Penal Code. The police, after investigation, on finding that no money was embezzled and there was only delay in handing over the charge for some explicable reason, submitted final report as "mistake of fact". When the report was placed before the learned Magistrate, notice was issued to the informant, but it could not be served. However, the Court clearly noticed the government Advocate to come prepared in the matter on the next date. Thereafter, the government Advocate made a statement before the Court that he has nothing to state with respect to the contents of the final report submitted under Section 173 of the Code of Criminal Procedure. Accepting this to be the statement of the informant of no objection against accepting the final report, the final report was accepted and the revision preferred by the State against the aforesaid order of acceptance of final report was also dismissed.

Hence, the present petition.



The learned counsel for the petitioner / State has drawn the attention of this Court to the provision of Section 173 (2) (ii) which mandates that while submitting a report, the Officer Incharge concerned shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of offence was first given and the provision contained in Section 190 of the Code of Criminal Procedure, which provides the power to the Magistrate for taking cognizance on a police report. Special reference has been made with respect to the provisions contained in Section 190(b) of the Code.

Apart from this, learned counsel for the petitioner has also drawn the attention of this Court to a Judgement of the Supreme Court in ***Bhagwant Singh Versus Commissioner of Police and Another [(1985) 2 Supreme Court Cases 537]***.

In the aforesaid case, it was held by a Three-Judges Bench of the Supreme Court that even though there is no specific provision under the Cr.P.C. for issuing notice to the informant for accepting the final report or for refusing to



take cognizance but on a combined reading of Section 173(2)(ii) and Section 190(b), it is obligatory on the part of the Magistrate to at least hear the informant who has interest in the final outcome of the case. In the aforesaid case, the F.I.R. was lodged by a private party and with respect to the report, no notice was sent by the Court before accepting the report of the police.

In that background, the Supreme Court observed that the informant was definitely a necessary party, who would have been interested in knowing the reason for cognizance not being taken in the matter. It was also held by the Supreme Court that after lodging of the F.I.R. and setting the Criminal Law into motion, the status of the informant does not fade away and he remains an integral part of the prosecution.

However, in the present case, it appears that notice was issued to the informant which apparently was not served upon him because the informant in the present case is an officer holding a transferable post. It is not known whether the concerned informant had remained the Block



Development Officer at Mahisi, in which capacity he has lodged the F.I.R.

Apart from this, when the Court, on finding that the notice was not received by the concerned informant, directed the government Advocate to come ready in the matter. The Government Advocate, representing the Official informant, made a categorical statement that he has nothing to offer against the report or the acceptance of such report by the Magistrate.

In such an event, no objection now can be raised by the petitioner / State that notice was not served upon the informant / Block Development Officer before the final report as "mistake of fact" was accepted.

Apart from this, I find that even the revision petition against the aforesaid order, was filed after a considerable delay of 4 years and 12 days and as such it was not entertained for the challenge being absolutely stale.

For the aforesaid reasons, this Court also does not find any reason whatsoever to interfere with the order of the Magistrate accepting the final report "mistake of fact" in



favour of Opposite Party as well as the order passed in Criminal Revision, non-suiting the petitioner / State on the ground of approaching the Court after a long delay of more than four years.

There is no merit in the petition and consequently it is dismissed.

(Ashutosh Kumar, J)

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