

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.651 of 2019

Arising Out of PS. Case No.-74 Year-2017 Thana- RAUTARA District- Katihar

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1. Upendra Singh Son of Late Yodhan Singh
 2. Sikandar Mahto Son of Gyanchan Mahto
 3. Akhilesh Mahto Son of Ram Balak Mahto
 4. Birendra Singh Son of Madan Singh
 5. Amarjeet Singh Son of Upendra Singh
 6. Jitu Singh Son of Madan Singh
 7. Sardar Madan Singh @ Madan Singh Son of Late Sardar Ganesh Singh
 8. Harjeet Singh Son of Late Rajendra Singh.
- All are R/o village- Baharkhan Sadalpur P.S.- Rautara, District- Katihar.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjeev Kumar Singh, Adv

For the Opposite Party/s : Mr.Sri Ramchandra Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 16-09-2019

Heard learned counsel for the parties.

2. The petitioners are accused in connection with Rautara P.S.Case No.74 of 2017 registered under Sections 147, 148, 341, 323, 379, 448, 436, 504 and 506/34 I.P.C. After investigation, the police submitted report under Section 173 Cr.P.C. as occurrence untrue and none of the petitioners were sent up for trial, however, the learned Magistrate disagreed with the police report and took cognizance under Section 436 I.P.C. against the petitioners. The learned court below has vaguely recorded that



it perused the case record as well as protest petition of the informant.

3. The law is well settled that the Magistrate may disagree with the police report if there is material collected during investigation. In this case, the Magistrate has disagreed with the police report without considering the material, disclosing commission of offence under Section 436 I.P.C., in the case diary. Hence, the impugned order is not sustainable in law.

4. It is worth to mention that Magistrate is empowered to accept the police report as submitted and proceed with the protest petition treating the same as a complaint petition. If the learned Magistrate would follow that procedure again there is provision for enquiry of the allegations made in the protest-cum-complaint petition. The Magistrate has not followed this procedure of law as well.

5. Hence, the impugned order leads to miscarriage of justice. Accordingly, the same is set aside and the matter is remitted back to the learned court below to pass order according to law.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
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