

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22560 of 2016

Arising Out of PS. Case No.-36 Year-2016 Thana- JHANJHARPUR District- Madhubani

1. Dr. Amrendra Narain Jha and Ors Son of Late Dr. Rameshwar Jha, Resident of Village- Barbatta, Salempur, Police Station- Musrigharari, District- Samastipur, at present posted as Medical Officer, Additional T.B. Center, Jhanjharpur, District- Madhubai.
2. Dr. Subhash Chandra Paswan, Son of Late Ramdeo Paswan, Resident of Coal Siding, Mokamaghat, Police Station- Mokama, District- Patna, at present posted as Civil Surgeon-cum-Chief Medical Officer, Katihar.
3. Dr. Sudhir Kumar Sinha, Son of Late Akhauri Mahendra Prakash Sinha, resident of Mohalla- Biratpur, Police Station- Aurangabad, District- Aurangabad, at present posted as Superintendent of A.N. Medical College Hospital, Gaya.

... .. Petitioners

Versus

1. State Of Bihar
2. Arun Kumar, Son of Late Rama Nand Prasad, Resident of Village- Dhurlakh, Police Station- Mufassil Samastipur, District- Samastipur at present resident at C/o Smt. Ranjaan Prasad 'A' Grade Nurse, Sub-Divisional Hospital, Jhanjharpur, Police Station- Jhanjharpur, District- Madhubani.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Aditya Narain Singh, Adv.
	:	Mr.Kundan Kumar Sinha, Adv.
For the Opposite Party/s	:	Mr.J.N.Thakur APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

11 22-06-2021

Heard Mr. Aditya Narain Singh, learned

Advocate for the petitioners and Mr. Jai Narayan Thakur,

learned APP for the State.

The present application has been filed for



quashing the order dated 10.03.2015 passed in Complaint Case No. 1182/2014, whereby the learned Additional Chief Judicial Magistrate, Jhanjharpur has directed for registration of a regular F.I.R as also for quashing the F.I.R. of Jhanjharpur P.S. Case No. 36 of 2016, which has been instituted on the direction of the learned Additional Chief Judicial Magistrate, Jhanjharpur referred to above under Sections 420 and 120B of the Indian Penal Code.

Mr. Aditya Narain Singh, learned Advocate for the petitioners has submitted that from the order dated 10.03.2015, it would become very clear that the learned court below did not follow the procedure in that regard and at the drop of the hat, directed for registration of the F.I.R. under Section 156(3) of the Code of Criminal Procedure.

Section 156(3) of the Code of Criminal Procedure empowers a Magistrate to direct an investigation by a Police Officer under Chapter -XII of the Code of Criminal Procedure. However, before exercising that jurisdiction, a Magistrate is required to see whether the situation is ripe for giving such a direction for institution of



a regular case. A series of remedial measures is required to be exhausted before such a decision could have been taken by the learned Additional Chief Judicial Magistrate. The complainant was required to prefer a complaint initially for the purposes of registration of the F.I.R. before the local police station and in the event of the F.I.R. not being registered, the complainant is required to approach the senior police functionary / the Superintendent of Police for the needful. If that effort of the complainant also goes in vain, then only he can approach the Court of the Magistrate for exercising his discretion under Section 156(3) of the Code of Criminal Procedure.

It has further been submitted that the order under 156(3) of the Code of Criminal Procedure is required to reflect an application of mind and such application of mind ought to be in terms reflected in the wordings of the order.

A perusal of the order dated 10.03.2015 indicates that an appeal for invocation of Section 156(3) of the Code of Criminal Procedure was filed before the



learned Magistrate out of the blue and without ascertaining whether the series of remedies available to a complainant was exhausted, the learned Magistrate happily directed for lodging the First Information Report. Apart from this, the complaint on which the subject F.I.R. has been registered, does not indicate any offence in particular. The accused persons of this case who are the petitioners here in this petition, are Government employees and the learned Magistrate did not at all consider that the accusation made in the complaint is in connection with their discharge of official functions and perforce any prosecution on that account requires prior sanction of the Government.

That not having been done, there is force in the submission of learned counsel for the petitioners that the order is mechanical and does not reflect proper application of mind.

Even otherwise, a detailed reading of the complaint also does not make out any offence whatsoever. It appears that the complainant / opposite party no. 2 is aggrieved by the action of the functionaries of the



Government and he has chosen to file a vague complaint to ventilate his personal grievances in a misdirected manner. All that the Magistrate was required to do in the aforesaid case was to find out whether any offence was made out and whether the complainant had approached the concerned police station first or had approached the superior police officer in the event of the police not registering the F.I.R. There does not appear to be any move on the part of the opposite party no. 2 under Section 154 (1) or 154(3) of the Code of Criminal Procedure. This makes the order impugned in the present petition highly suspect in the eyes of law. Consequently, this Court is inclined to quash the subject F.I.R.

This Court had a long time ago, directed for issuance of notice to opposite party no. 2 and had stayed the operation of the order and any sequel proceeding. There has been no appearance on behalf of opposite party no. 2 all this while even though the records reveal that the notices had been received by opposite party no. 2 personally. It was indicated in the order dated 17.03.2021



that in case of O.P. No. 2 not appearing in the matter, the proceeding would be taken up *ex-parte*.

For the reasons afore-stated, the order dated 10.03.2015 as also the subject F.I.R. bearing Jhanjharpur P.S. Case No. 36/2016 and all further sequel action taken pursuant to the aforesaid order or the registration of the F.I.R., are quashed.

The petition stands allowed.

(Ashutosh Kumar, J)

sunilkumar/-

U		T	
---	--	---	--

