

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35647 of 2016

Arising Out of PS. Case No.-405 Year-2014 Thana- LAHERIYASARAI District- Darbhanga

1. RANJEET KUMAR MANDAL @ RANJEET MANDAL SON OF MANTU MANDAL RESIDENT OF MOHALLA - SHAHGANJ, CHAMAR TOLA, P.S. - LAHERIASARAI, DISTRICT - DARBHANGA
2. ANIL RAM SON OF RAMATAR RAM RESIDENT OF MOHALLA - SHAHGANJ, CHAMAR TOLA, P.S. - LAHERIASARAI, DISTRICT - DARBHANGA
3. BIRJU RAM SON OF MANGAL RAM RESIDENT OF MOHALLA - SHAHGANJ, CHAMAR TOLA, P.S. - LAHERIASARAI, DISTRICT - DARBHANGA
4. NARAYAN RAM SON OF BILAT RAM RESIDENT OF MOHALLA - SHAHGANJ, CHAMAR TOLA, P.S. - LAHERIASARAI, DISTRICT - DARBHANGA
5. SANJEET RAM SON OF SATTO RAM RESIDENT OF MOHALLA - SHAHGANJ, CHAMAR TOLA, P.S. - LAHERIASARAI, DISTRICT - DARBHANGA

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. PRAMILA DEVI WIFE OF LATE ARUN RAM RESIDENT OF MOHALLA - SHAHGANJ, CHAMARTOLI, P.S. - LAHERIASARAI, DISTRICT - DARBHANGA

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Jha, Adv., Mr. Prem Kumar Jha, Adv., Mr. Mukesh Mishra, Adv.
For the State	:	Mrs. Asha Kumari, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

11 02-09-2024 This is an application under Section 482 of the Cr.P.C. filed by the petitioners/accused persons with a prayer to set aside the order of cognizance dated 19th March, 2016, passed by the learned Chief Judicial Magistrate, Darbhanga in G.R. Case No. 2973 of 2014, corresponding to T.R. No. 1285 of



2016, arising out of Laheriasarai P.S. Case No. 405 of 2014, dated 1st September, 2014, registered for the offence under Sections 302/201/34 of the I.P.C.

2. Laheriasarai P.S. Case No. 405 of 2014 was registered on the basis of a written complaint submitted by one Pramila Devi on 1st September, 2014, stating, inter alia, that the F.I.R. named accused persons/petitioners took her husband away from her house on 31st August, 2014 at about 5:00 P.M. towards the local market. Thereafter, the husband of the de facto complainant never returned his house. The wife of the said missing person conducted search and on the following morning she came to know from one Narayan Ram that the shirt of her husband was lying near a pond. Thereafter, she conducted search along with her brother-in-law and found the dead body of her husband in the pond. A napkin (gamcha) was wrapped around the neck of the deceased and blood was oozing out from his nostrils.

3. It is on the record that Police submitted Final Report in the above-mentioned Laheraiasarai P.S. Case No. 405 of 2014. The learned Chief Judicial Magistrate, Darbhanga, however, did not accept the Final Report and on the basis of last seen together theory as well as the materials on case diary, he



took cognizance of offence against the F.I.R. named petitioners/ accused persons under Sections 302/201/34 of the I.P.C.

4. It is submitted by the learned Advocate on behalf of the petitioners on query that the case was committed to the Court of Sessions and trial of the case is going on.

5. It is needless to say that when trial has already been started in a criminal case, this will end on logical conclusion of either conviction or acquittal. When the stage of trial has commenced, the Court cannot quash the criminal proceeding under the provision of Section 482 of the Cr.P.C.

6. The learned Advocate for the petitioners, however, refers to a decision of the Hon'ble Supreme Court in the case of *Vasanti Dubey Vrs. The State of Madhya Pradesh*, reported in *2012 (2) PLJR 43 (SC)*.

7. The issue involved in the aforementioned report is as to whether the Magistrate/Special Judge could straightaway direct for submission of charge-sheet in case, he refused to accept Final Report/Closure Report of the Police/ Investigating Agency and thereafter direct the Police to submit charge-sheet, in case he was of the opinion that the case was not fit to be closed and it require to be proceeded further.

8. The learned Advocate on behalf of the petitioners



has referred to paragraph 13 of the said Judgment which runs thus:-

“13. However, the learned single Judge completely missed the ratio laid down in the case of Abhinandan Jha (supra) which had been relied upon by the learned single Judge of the High Court on an earlier occasion also when the order of the Special Judge refusing to accept closure report and directing submission of charge-sheet was quashed and the entire legal position was summed up in unequivocal terms as follows:-

"There is no power, expressly or impliedly conferred under the Code, on a Magistrate to call upon the police to submit a charge-sheet, when they have sent a report under Section 169 of the Code, that there is no case made out for sending up an accused for trial. The functions of the magistrate and the police are entirely different, and though, the Magistrate may or may not accept the report, and take suitable action according to law, he cannot impinge upon the jurisdiction of the police, by compelling them to change their opinion so as to accord with his view."

This position has been further reiterated and reinforced in a recent judgment of this Court delivered in the matter of Ram Naresh Prasad vs. State of Jharkhand², wherein it has been held that when the police submitted a final report of investigation of the case which in colloquial term is called closure report, the magistrate cannot direct the



police to submit the charge-sheet. However, on the basis of the material in the charge-sheet, he may take cognizance or direct further investigation. In fact, this position is clearly laid down 2 (2009) 11 SCC 299

under Section 190 read with [Section 156](#) of the Cr.P.C. itself and the legal position has been time and again clarified by this Court in several pronouncements viz. in the matter of [Bains vs. State](#)³, wherein their lordships have summarised the position as follows:-

"1. When a Magistrate receives a complaint, he may, instead of taking cognizance at once under Section 190(1)(a) direct a police investigation under Section 156(3) ante;

2. Where, after completion of the investigation, the police sends an adverse report under Section 173(1), the Magistrate may take any of the following steps :

"i. If he agrees with police report, and finds that there is no sufficient ground for proceeding further, he may drop the proceeding and dismiss the complaint.

ii. He may not agree with the police report and may take cognizance of the offence on the basis of the original complaint, under Section 190(1)(a) and proceed to examine the complainant under Section iii. Even if he disagrees with the police report, he may either take cognizance at once upon the complaint, direct an enquiry under Section 202 and after such 3 AIR 1980 SC 1883 =



1980 (4) SCC 631 enquiry take action under Section 203. However, when the police submits a final report or closure report in regard to a case which has been lodged by the informant or complainant, the magistrate cannot direct the police to straightway submit the charge-sheet as was the view expressed in the matter of [Abhinandan Jha](#) (supra) which was relied upon in the matter of [Ram Naresh Prasad](#) (supra)."

9. On careful perusal of the aforesaid Judgment, it appears that the Hon'ble Apex Court decided the issue, as to whether a Magistrate can direct the Investigating Agency to submit charge-sheet in spite of the fact that Final Report was filed against the accused persons. The Hon'ble Apex Court held that there is no power conferred under the Code on a Magistrate to call upon the Police to submit a charge-sheet, when they have sent a report under Section 169 of the Code, that there is no case made out for sending up an accused for trial.

10. The fact of the reported decision is distinguishable from the facts of this case.

11. In the instant case, the learned Chief Judicial Magistrate, Darbhanga took cognizance of the offence under Sections 302/201/34 of the I.P.C., on perusal of the materials in case diary. It is always open for the learned Magistrate to



peruse the case diary before accepting the Final Report to come to an independent finding, as to whether from the materials collected by the Investigating Officer, a case for trial is made out against the accused persons or not. Therefore, the ratio of the above decision is not applicable under the facts and circumstances of this case.

12. The learned Advocate on behalf of the petitioners also refers to another decision of this Court in the case of **S.M. Mahtab Ahmad Vrs. State of Bihar and Another**, reported in **2016 (4) PLJR 508**.

13. It is held by a Coordinate Bench of this Court in the aforesaid reported decision that when an Investigating Agency, after thorough investigation, submits a Final Report exonerating the accused persons, the said report may not be treated as waste paper. Once a report is submitted, the learned Magistrate at the time of differing with the Police Report is required to assign succinct reason. Since in the order impugned, no reason has been assigned, the Court is satisfied that order impugned is liable to be set aside, particularly, in view of the nature of accusation, as has been levelled in the complaint. The fact of the above-mentioned reported decision is that the learned Magistrate took cognizance of offence against the petitioners



under Sections 406 and 420 of the I.P.C. The Coordinate Bench found that the allegation is civil in nature and no criminal offence is attributed to the accused persons.

14. In the instant case, the learned Chief Judicial Magistrate, Darbhanga took cognizance of offence against the petitioners on the basis of last seen together theory and materials in the case diary.

15. It is needless to say that even after filing Final Report, if the learned Magistrate finds prima facie evidence, on perusal of the case diary, against the accused persons and holds that the accused persons are liable to face trial for the offence punishable under Sections 302/201/34 of the I.P.C., it is within the jurisdiction of the learned Magistrate to take cognizance of the offence.

16. Moreover, it is frankly admitted by the learned Advocate for the petitioners that the trial of the case has already been started.

17. For the reasons stated above, while the trial of the case is in progress, criminal proceeding cannot be quashed holding, inter alia, that the order of cognizance is bad.

18. Accordingly, the application under Section 482 of the Cr.P.C. is dismissed.



19. Since the trial of the criminal case is pending for long time and the cognizance was taken in 2016, the learned Sessions Judge is directed to conclude the trial at the earliest and preferably within a period of six months from the date of communication of this order.

20. In view of the above order, all interim orders granted in the instant proceeding is vacated.

(Bibek Chaudhuri, J)

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