

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2329 of 2023

Arising Out of PS. Case No.-63 Year-2021 Thana- SAKATPUR District- Darbhanga

Awdesh Paswan, S/o Binod Paswan, R/o Village-Pokharbhinda, P.S.-Sakatpur,
Distt.- Darbhanga.

... .. Appellant

Versus

1. The State of Bihar
2. Sushil Singh S/o Raj Kumar Singh R/o Village-Pokharbhinda, P.S.-Sakatpur,
Distt.- Darbhanga.

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Girish Chandra Jha, Advocate
For the Respondent	:	Mr. Sadanand Paswan, Spl.P.P.
For the Informant	:	Mr. Ajay Kumar Thakur, Advocate Mrs. Vaishnavi Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 25-01-2024

Heard learned counsel appearing on behalf of the
appellant, learned Spl.P.P. appearing on behalf of the State and
learned counsel for the informant.

2. It transpires from the argument of learned
counsel appearing on behalf of the appellant that the police did
not sent up/submitted charge-sheet for respondent no.2, namely,
Sushil Singh one of the accused for the reason that on the date
and time of occurrence, he was found on duty in Intermediate
School at Chapra, which is somewhere at the distance of more
than 100 kms from the place of occurrence, which has been
accepted by the learned Special Judge. Being aggrieved thereof,



the present appeal has been preferred.

3. It would be appropriate to reproduce Para-21, 22 and 23 of the judgment of Hon'ble Supreme Court rendered in the matter of **Dharam Pal vs. State of Haryana and Others** reported in **(2016) 4 SCC 160** as under:-

“21. In this context, we may notice the statutory scheme pertaining to investigation. Section 173 CrPC empowers the police officer conducting investigation to file a report on completion of the investigation with the Magistrate empowered to take cognizance of the offence. Section 173(8) CrPC empowers the officer-in-charge to conduct further investigation even after filing of a report under Section 173(2) CrPC if he obtains further evidence, oral or documentary. Thus, the power of the police officer under Section 173(8) CrPC is unrestricted. Needless to say, the Magistrate has no power to interfere but it would be appropriate on the part of the investigating officer to inform the Court. It has been so stated in *Rama Chaudhary v. State of Bihar* (2009) 6 SCC 346.

22. In *Vinay Tyagi v. Irshad Ali* [(2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557], wherein a two-Judge Bench, after referring to the decision in *Bhagwant Singh v. Commr. of Police* [(1985) 2 SCC 537] has held thus :

“38. However, having given our considered thought to the principles stated in these judgments, we are of the view that the Magistrate before whom a report under



Section 173(2) of the Code is filed, is empowered in law to direct 'further investigation' and require the police to submit a further or a supplementary report. A three-Judge Bench of this Court in *Bhagwant Singh* [(1985) 2 SCC 537] has, in no uncertain terms, stated that principle, as aforenoticed."

23. In the said case, the question had arisen whether a Magistrate can direct for reinvestigation. While dealing with the said issue, the Court has observed :
(*Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762) :

"43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct 'further investigation', 'fresh' or 'de novo' and even 'reinvestigation'. 'Fresh', 'de novo' and 'reinvestigation' are synonymous expressions and their result in law would be the same. *The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection*".

(Emphasis mine)

4. Therefore, it can be said safely that the acceptance of the charge-sheet is a subjective satisfaction of the Special Court.

5. Furthermore, as a matter of alternate relief, the



relief as mentioned under Section 319 of the Code of Criminal Procedure is also available to the appellant, if occasion so arises, during the trial of the case.

6. Accordingly, the present appeal stands dismissed.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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