

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4974 of 2019

In
Criminal Writ Jurisdiction Case No.1425 of 2019

Arising Out of PS. Case No.-249 Year-2017 Thana- NAUTAN District- West Champaran

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SHEIKH SAMSDAD Son of Mohammad Neyaz Alam @ Sheikh Neyaz
Resident of Village - Sekhauna, P.S.- Jagdishpur, Distt - West Champaran.

... .. Appellant/s

Versus

1. THE STATE OF BIHAR THROUGH THE HOME SECRETARY
GOVERNMENT OF BIHAR, PATNA Bihar
2. The Director General of Police, Government of Bihar, Patna. Bihar
3. The Inspector General of Police, Tirhut Range Muzaffarpur. Bihar
4. The Deputy Inspector General of Police, Bettiah, West Champaran. Bihar
5. The District Magistrate, West Champaran at Bettiah. Bihar
6. The Superintendent of Police, West Champaran at Bettiah. Bihar
7. The Officer In Charge, Nautan (Jagdishpur), P.S.- District - West
Champaran. Bihar
8. Lalita Devi Wife of Dhuran Ram Resident of Village - Sekhauna, P.S.-
Jagdishpur, Distt - West Champaran.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Sanjay Kumar No 7
For the Respondent/s : Mr.Prabhat Kumar Verma

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

10 24-10-2024 Heard the learned counsel for the appellant, learned

counsel for the State and learned Spl. P.P. for the SC/ST Act.

None has appeared on behalf of the respondent no. 8 despite

valid service of notice.

2. The present appeal has been preferred by the

appellant for setting aside the order dated 15.09.2018 passed by

the learned Additional District and Sessions Judge, 1st Bettiah at



West Champaran in Tr. No. 298 of 2018 arising out of Nautan (Jadishpur) P.S. Case No. 249 of 2017.

3. As per the prosecution case, the informant namely Lalita Devi has submitted a written report before the Officer-in-Charge, Nautan Police Station alleging therein that on 19.06.2017, his son namely Raj Kumar went out for grazing his goat and because of the previous dispute, Sheikh Samshad and Nasari Khatoon caught the son of the informant and abused him by taking his caste name and have also assaulted him.

4. On the basis of the written complaint, Nautan (Jagdishpur) P.S. Case No. 249 of 2017 was registered under Sections 341, 323, 504 of the Indian Penal Code and under Sections 3(i)(r)(ii)(VA) SC/ST (POA) Act against the appellant and two others and after investigation, the police has submitted charge-sheet No. 63 of 2017 only against other co-accused persons namely Nasari Khatoon and Rubina Khatoon

5. It has been submitted by the learned counsel for the appellant that the appellant was not sent up for trial and the informant, herself had said that the appellant Sheikh Samsad was ten years old on the date of occurrence.

6. It has further been submitted by the learned counsel for the appellant that upon perusal of the FIR, it is



evident that on the date of occurrence, the appellant was a child in conflict of law under Section 2(13) of the Juvenile Justice (Care and Protection of Children) Act, 2015 and according to the Aadhar Card also, the appellant was a 10 year old child on the date of occurrence but the learned Special Judge concerned, having fully aware of the fact that the petitioner is a minor on the date of occurrence, has differed with the police report and has taken cognizance against the appellant also.

7. In support of his submissions, learned counsel for the appellants has also relied upon the judgment of Hon'ble Supreme Court in the case of *Pepsi Foods Ltd. v. Special Judicial Magistrate* reported in (1998) 5 SCC 749, and the judgment of this Court passed in the case of *S.M. Mahtab Ahmed Vs. The State of Bihar* reported in 2016 (4) PLJR 508 and has contended that the learned Magistrate while differing to the final form must give reasons and any order of cognizance differing with the final form bereft of reasons is no order in the eye of law.

8. Learned counsel for the State and learned Spl. PP for the SC/ST Act opposed the application of the appellant and have submitted that cognizance has rightly been taken and no interference is required in this order.



9. I have heard and considered the submissions of the parties.

10. From the facts of the case, it is clear that the sole appellant was not sent up for trial and the police, after investigation has submitted the final form but the Special Judge concerned has taken cognizance differing with the police report without assigning any reasons.

11. The Hon'ble Supreme court in the case of ***Pepsi Foods Ltd. v. Special Judicial Magistrate (Supra)***, has held as follows:-

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge on to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any



offence is prima facie committed by all or any of the accused."

12. This Court in its judgment passed the case of ***S.M. Mahtab Ahmed Vs. The State of Bihar (Supra)*** in paragraph nos. 8 and 9 has held as follows:-

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record including the Lower Court Record After going through the record. it is evident that the complaint petition was thoroughly investigated by the Investigating agency and thereafter, it was found that it was not a case of criminal offence, rather the investigating officer had noticed that it was a civil dispute Accordingly petitioner's name was not included in column no. 11 of the charge sheet. Meaning thereby that petitioner was not forwarded as accused in the case and final report was submitted. So far as point, which has been raised by the learned counsel for the complainant that even in business transaction, there can be case of criminal offence, this Court is in agreement with his submission, but in the present case, the case was investigated thoroughly by the statutory investigating agency and no sufficient material was found to forward the petitioner to face trial and his name was not incorporated in the charge-sheet as accused. The learned Chief Judicial Magistrate though was competent to pass order of cognizance differing with the police report, it was essential on his part to assign reason succinctly for differing with the police report On perusal of the impugned order the Court is satisfied that no reason has been assigned by the learned Magistrate and as such, on this very point, the order of cognizance is liable to be set aside.



9. It goes without saying that if an investigating agency after thorough investigation submits final report exonerating accused persons, the said report may not be treated as waste paper. Once such 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 nature of accusation, as has been levelled in the complaint petition.

13. Upon perusal of the impugned order, it is clear that no reasons has been assigned to differ with the final form and none of the materials of the case diary have been discussed by the Special-Judge and therefore the impugned order dated 15.09.2018 cannot be sustained.

14. Accordingly, this application is allowed and the order dated 15.09.2018 passed by the learned Additional District and Sessions Judge, 1st Bettiah at West Champaran in Tr. No. 298 of 2018 arising out of Nautan (Jadishpur) P.S. Case No. 249 of 2017 is hereby set aside with regard to the present appellant only.

(Sandeep Kumar, J)

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