

Rameshwar Singh and ors. Vs. the State of Bihar and ors.

Rameshwar Singh and ors. Vs. the State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/134044

Court : Patna

Decided On : Aug-21-2006

Judge : I.P. Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 156(3), 173, 173(1), 173(2), 190(1), 482, 200 and 202; Indian Penal Code (IPC) - Sections 120B, 182, 211, 323, 380, 386 and 504

Appeal No. : Cr. Misc. No. 29103 of 2005

Appellant : Rameshwar Singh and ors.

Respondent : The State of Bihar and ors.

Disposition : Petition dismissed

Judgement :

I.P. Singh, J.

1. This application filed under Section 482 of the Code of Criminal Procedure, 1973 (in short the Code) is directed against the order dated 15.9.2003 passed by the learned Chief Judicial Magistrate, Begusarai in G.R. Case No. 288 of 2003 arising out of Naya Gaon P.S. Case NO. 6 of 2003 by which deferring with the police report the learned Magistrate had passed orders for the issuance of the processes against the Petitioners for facing the trial for the offences under

Sections 323, 380, 386, 120B and 504 of the Indian Penal Code. Further it is also directed against the order dated 4th May, 2005 passed by the learned 6th Addl. Sessions Judge, Begusarai in Cr. Revision No. 536 of 2003 by which he dismissed the revision application filed before him.

2. The prosecution case, in short, is that one Ram Anuj Kunwar (opposite party No. 2) had filed a complaint petition before the learned Chief Judicial Magistrate Begusarai making out various allegations against the present petitioners. It was registered as Complaint Case NO. 92 of 2003. The learned Magistrate sent the same to the police under the provisions of Section 156(3) of the Code where it was registered as Naya Gaon P.S. Case NO. 6 of 2003. The police after completing the investigations submitted final form disclosing that the case was false and recommended for action under Sections 182 and 211 of the Indian Penal Code. In the meantime a protest petition was filed by opposite party No. 2 against the police for investigating the case in a Partisan manner and acting against him.

3. The final report was placed before the learned Chief Judicial Magistrate, Begusarai who did not accept the same. Deferring with the conclusions arrived at by the police in the course of investigation he, by the impugned order, took cognizance of the offence under various sections mentioned above and transferred the case to the court of Shri K.K. Singh, Judicial Magistrate, 1st Class, Begusarai. It is against this order that the present application has been filed.

4. On behalf of the petitioners it has been submitted that the police after investigation did not find a prima facie case against the Petitioners. On the other hand, the police found a prima facie case against the informant (opposite party No. 2) for offences under Sections 182 and 211 of the Indian Penal Code. Under this circumstance it has been submitted that the cognizance of the offences against the present petitioners should not have been taken by the impugned order. It has further been pointed out that it was incumbent on the learned Chief Judicial Magistrate, who accepted the final report submitted by the police, and that he should have initiated the proceedings under Sections 182 and 211 of the Indian Penal Code against the opposite party No. 2. In other words it has been submitted that once the police has submitted the final form as false it was incumbent upon

the Magistrate to accept the same and to proceed in accordance with the recommendations of the police. It has been submitted that the law does not permit the Magistrate to differ with the police report and to take cognizance of the offences against the present petitioners.

5. As against it the learned Counsel appearing on behalf of opposite party No. 2 has submitted that the final authority in this matter is the Magistrate taking cognizance of the offence and not the police. Hence it was open to the Magistrate to differ with the conclusions of the police and to take cognizance of the offences and to issue processes against the petitioners.

6. The submissions made on behalf of the parties in this regard call for a close examination. However, the law on this point is well settled. In the case of Kuli Singh and Ors. v. The State of Bihar and Ors. : AIR1978 Pat298 it has been held that on receiving a report under Section 173 a Magistrate has full jurisdiction to differ with the conclusions of the police and to direct the accused not named in the police report or not sent up for trial to be also put on trial. It has further been held that Section 190(1)(b) of the Code empowers the Magistrate to differ with the police report be it a charge-sheet or be it a final report so called. In this connection a reference may also be made to the case of H.S. Bains v. The State (Union Territory of Chandigarh). In this decision it has been held that when a Magistrate orders an investigation under Section 156(3) and receives a police report under Section 173(1) he may thereafter do one of the following, namely,:

(1) He may decide that there is no sufficient ground for proceeding further and drop action;

(2) He may take cognizance of the offences under Section 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report;

(3) He may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine the complainant on solemn affirmation.

7. From these two decisions it would be clear that the final arbiter in a situation like this is the Magistrate and not the police. Even if the police submits the final form reporting the case to be false it is open to the Magistrate not to accept the same and take cognizance of the offence as disclosed in the case diary.

8. In this connection a reference may also be made to the Full Bench decision of this Court in the case of S.K. Latfur Rahman and Ors. v. The State 1985 P.L.J.R. 640 (F.B.) which also supports the above mentioned views. In a recent decision in the case of India Carat (Pvt). Ltd. v. State of Karnataka : [1989]1SCR718 . The Hon'ble Supreme Court has held that the position now, is therefore, well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of.... The Magistrate can ignore the conclusions arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. Thus this decision very clearly provides that even when the police report is to the effect that no case is made out against the accused, the Magistrate can take cognizance of the offence after taking into account the statements of the witnesses examined by the police. Further the Magistrate can ignore the conclusions arrived at by the police and come to his own conclusion by taking cognizance of the offence.

9. In a recent decision in the case of Horil Sao and Ors. v. The State of Bihar and Anr. 2002 (1) P.L.J.R. 318, in very lucid judgment, Chandramauli Kr. Prasad, J. has also laid down the law on the subject.

10. Thus from the authoratative pronouncements of the Hon'ble Supreme Court as also of this Court it is clear that in a suitable case the Magistrate taking cognizance of the offence cab differ with the police report and take cognizance of the offence

even when the police has reported the case to be false. Under this circumstance I do not find any defect in the impugned orders of the revisional court as also in the order by which the learned Chief Judicial Magistrate has taken cognizance of the offence under various sections mentioned in the impugned order and has transferred the case to the court of the Judicial Magistrate.

11. In view of above it is clear that there is no merit in this Petition. It is, accordingly, rejected. The learned court below will proceed in the matter in the light of the observations made above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com