

(2010) 04 PAT CK 0162
In the Patna High Court

Arjun Prasad Sinha and Ram Jiwan Prasad	APPELLANT
Vs	
State of Bihar and Ramdeo Mahto	RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Citation : (2010) 04 PAT CK 0162

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—Heard learned Counsel for the petitioners and learned Counsel for the State.

2. Petitioners have prayed for quashing of entire criminal proceeding in so far as it relates to these petitioners pending vide Islampur P.S. Case No. 152 of 1998 dated 7.9.1998 (G.R. No. 1117/98) and also the order dated 12.2.1999 passed by Additional Chief Judicial Magistrate, Hilsa whereby after taking cognizance of the offence on the basis of charge-sheet submitted by the police against three other co-accused, he proceeded to examine the materials in the case diary and also issued process against these two petitioners although in the police report it was mentioned that these two petitioners were absconding and investigation was kept pending against them.

3. Learned Counsel for the petitioner has first raised a question of law that the learned Magistrate has no jurisdiction to issue process against these two petitioners when the police report showed that investigation in respect of these two petitioners have been kept pending. He has also advanced further submissions such as insufficiency of material and weaknesses in the prosecution case.

4. The material issue for determination in this case is the first issue relating to jurisdiction. Learned Counsel for the petitioner has placed reliance upon a judgment of the Supreme Court in the case of Raghubans Dubey Vs. State of Bihar, particularly paragraph-9 thereof to submit that there are different procedures provided for proceedings on the basis of complaint filed by persons

other than Police and by Police covered by Section 190(1)(a) and (b) respectively of the Code of Criminal Procedure (hereinafter referred to as the "Cr.P.C"). On the other hand, learned Counsel for the State has also placed reliance upon that judgment and another judgment in the case of *Swil Ltd. v. State of Delhi* AIR 2001 SC 2747.

5. No doubt Section 190 of the Cr.P.C dealing with cognizance of offence by Magistrate classifies three sources numbered as Clause- (a), (b) and (c) to Section 190(1) upon which the Magistrate may take cognizance of any offence. Sub-Clause (a) refers to complaint of facts which constitutes such offence and Sub-Clause (b) refers to a police report of such facts and Sub-Clause (c) refers to information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

6. In the present case there is no dispute regarding the source upon which the Magistrate has taken cognizance. It is a upon police report as mentioned u/s 190(1)(b). It is well established in law that police report would cover and include the case diary and other papers submitted with the police report. So far as principle of law settled by Apex Court in the case of *Raghubans Dubey* (supra) is concerned, the same goes against the stand of the petitioners because it has been categorically held in paragraph-9 itself that- "In our opinion, once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence".

7. That judgment also placed reliance upon earlier judgments of the Supreme Court, particularly in the case of *Pravin Chandra Mody Vs. State of Andhra Pradesh*,

8. The judgment in the case of *Swil Ltd.* (supra) relied upon by learned Counsel for the State is also based upon law settled in the case of *Raghubans Dubey* (supra) with further clarification and emphasis that after taking cognizance of the offence the Magistrate is empowered to issue process to the accused and at that stage Magistrate can decide to issue process even against particular person/ persons not named in the charge-sheet. For that purpose he is required to consider the FIR and the statements recorded by the police officer and other documents tendered along with charge-sheet.

9. Learned Counsel for the petitioner does not dispute the legal proposition that Magistrate can differ from the opinion of the police and issue process even against such accused persons whom the police may not sent up for trial on an opinion that they are not involved in the offences. However, he insists that such power to differ from the opinion of the police will be available to the learned Magistrate only after the police declares that it has concluded the investigation

and not till the investigation remains pending. It is not possible to accept this proposition because this would amount to curtailing the power of the Magistrate even after he has taken cognizance of the offence in a legal and proper manner on the basis of police report. If the materials are available before the learned Magistrate for issuing process against persons not charge-sheeted by the police, the Magistrate will always have the power and jurisdiction to issue process against such person also. Merely because the investigation might be kept pending by the police will not have any affect upon such power of the Magistrate. A contrary view would be against the law settled by the Apex Court as noticed above. In this case, the Magistrate has mentioned that there were materials against the petitioners and there was no justification for the police to keep the investigation pending.

10. It is made clear that the subsequent development to the effect that police later on submitted final report in favour of the petitioners which was not accepted by the Magistrate will be of no help to the petitioners.

11. In view of the aforesaid discussions, this Court finds no merit in this application. It is accordingly dismissed.