
(2006) 09 PAT CK 0007

In the Patna High Court

Case No : Criminal Miscellaneous No. 19801 of 2006

Bhikhranjan Yadav

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 203

Citation : (2007) 1 PLJR 644

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : B.N. Sinha Suman, for the Appellant; R.K.P Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh, J.—Heard. In the instant case no First Information Report was filed. A complaint was lodged. The Magistrate considered the statement on oath of the complainant and of the witnesses. He directed the Sub-Divisional Officer to make an investigation and looked into the report of the Sub-Divisional Officer. The learned counsel for the petitioner contends that the report of the Sub-Divisional Officer was an extraneous material and accordingly, the same could not be looked at. The impugned order, it was submitted, would show that while passing the order, the learned Magistrate relied upon extraneous materials and accordingly, the impugned order must go. In this connection, the learned counsel for the petitioner relied upon a judgment of a Division Bench of this Court in the case of Naresh Singh and Ors. vs. The State of Bihar, reported in 1988 P.L.J.R. 216 and in particular, paragraphs 10, 11 and 12 thereof.

2. In terms of the provisions contained in the Code, it is the duty of each citizen of this Country to report to the Police Officer having jurisdiction, in relation to an offence, which he has witnessed or of which he has come to know. The Code grants him a right to file a complaint in relation thereto, if he is personally affected thereby. In the case referred to above as well as in Chandra Deo Singh

Vs. Prokash Chandra Bose and Another, , while the person lodged a First Information Report, he also lodged as complaint. In the case of Chandradeo Singh vs. Prokash Chandra Bose, the Hon''ble Supreme Court noticed that the Magistrate while dismissing the complaint took into account the result of the investigation made pursuant to the First Information Report. In the case of Naresh Singh & Ors. vs. The State of Bihar, too the Division Bench noticed that while accepting the complaint the Magistrate took into account the result of the investigation made pursuant to the First Information Report. The Court clearly held that the same is not permissible inasmuch as, the moment, the Magistrate took into account the result of the said investigation in determining the merit of the complaint filed before him, he must have been influenced thereby, which is extraneous to the complaint.

3. While delivering the judgment in Naresh Singh & Ors. vs. The State of Bihar, the Division Bench observed as follows:

Section 203 itself makes it clear that before dismissing the petition of complaint, the Magistrate has to consider the statement on oath of the complainant and of the witnesses alongwith the result of the enquiry or investigation, if any, held u/s 202.

4. Therefore, the Division Bench has pronounced that while dealing with the matter u/s 203, it is obligatory on the part of the Magistrate not only to look into only the statements on oath of the complainant and of the witnesses but also the result of the enquiry or investigation, if any, held u/s 202. Section 202 authorises a Magistrate to enquire or to direct investigation to be made either by a Police Officer or by such other person as he deems fit. The moment, he directs either the Police Officer or such other person as he deems fit to investigate upon the matter, while exercising power u/s 203, it becomes obligatory on the part of the Magistrate to take into account the report of such investigation alongwith statements on oath of the complainant and evidence of the witnesses supporting the complaint. That appears to be the binding precedent pronounced by a Division Bench of this Court. In those circumstances, it cannot be said that the report of the Sub-Divisional Officer was an extraneous material, which could not be looked at by the Magistrate. The application, accordingly, fails and the same is dismissed.