

(1998) 08 PAT CK 0058

In the Patna High Court

Case No : Criminal Miscellaneous No. 13598 of 1998

Devendra Singh and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 12-08-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 173(2), 173(8), 482
Penal Code, 1860 (IPC) — Section 302, 320, 323, 324, 328

Citation : (1998) 3 PLJR 345

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Rajesh Kumar Sinha, for the Appellant; Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this application filed u/s 482 of the Code of Criminal Procedure, the Petitioners have prayed for quashing the order dated 6.4.1998 passed by the Chief Judicial Magistrate, Chapra, whereby the Chief Judicial Magistrate refused to act in pursuance of the police report submitted before him u/s 173(8) of the Code of Criminal Procedure and directed for commitment of the case.

2. It appears that a criminal case bearing Derani P.S. case No. 26 of 1992 under Sections 448, 323, 324, 302/34 I.P.C. was instituted on the basis of Fard-beyan of the informant, Nand Kishore Singh in which the informant alleged that on 22.6.1992, the Petitioners came armed with Bhala, Pharsa and lathi at the residence of the informant and accused Shivjee Singh hurled Bhala on him which did not hit him but caused injury in the index finger of Indu Kumari. It is alleged that Indu Kumari was treated by a village Doctor who advised to take her to Sadar Hospital, but on way to the hospital, she died. On the basis of the Fard-beyan the police investigated into the matter and submitted charge sheet against the Petitioners. The Petitioners case is that the vi3cera report was subsequently received by the police revealed that the death of Indu Kumari was caused due to poisoning but in order to cover up their own crime the informant had falsely

lodged the aforesaid case. The Petitioners case is that subsequently when further evidence was found regarding innocence of the Petitioners and involvement of the informant and his associates in this offence, the Superintendent of Police submitted his memo and prayed to the Chief Judicial Magistrate not to proceed with the earlier charge sheet and further stated that the death was caused by poisoning. It appears that after investigation the police submitted final report against the Petitioners. Since overwhelming materials were found about the complicity of murder, the police registered Derani P.S. case No. 25 of 1995 against the informant and his associates under Sections 328, 320/34 I.P.C. for the murder of Indu Kumari. It is alleged by the Petitioners that however, on the basis of the mala fide chargesheet, the learned Chief Judicial Magistrate took cognizance against the Petitioners in routine manner and without application of mind and transferred the case to the court of the Judicial Magistrate, Chapra. The Petitioners therefore, moved an application before the Chief Judicial Magistrate for acquittal but the learned Chief Judicial Magistrate refused the prayer of the Petitioners by the impugned order. Hence this application.

3. Mr. Bimal Kumar, learned Counsel appearing on behalf of the Petitioners assailed the impugned order as being illegal and wholly without jurisdiction; Learned Counsel submitted that the court below has failed to exercise its jurisdiction. Learned Counsel firstly submitted that there is no bar for the Magistrate to pass order u/s 173(2) of the Code merely because cognizance of the offence was taken. Learned Counsel submitted that at any stage of the proceeding before the case is committed to the Court of Session, the Magistrate has all power to exonerate any person against whom the allegation is found false and frivolous. Learned Counsel then submitted that the court below has totally failed to exercise jurisdiction so vested in it by law. Learned Counsel relied upon the the decisions of the cases reported in 1997 BLI 478, in the case of Ram Lal Narang Vs. State (Delhi Administration), and in the case of The State Vs. Mehar Singh and Others, . Learned Counsel also relied upon the decision of this Court in the case of Dr. Shrawan Kumar v. State of Bihar (1997) 1 All P.L.R. 198 : 1997 (1) PLJR 022.

4. There is no dispute with regard to the settled proposition of law that it is wholly within the jurisdiction of the Magistrate to pass appropriate order even after cognizance has been taken on the basis of the report submitted by the police after investigation. Further it is in the discretion of the Magistrate to pass appropriate order on the basis of the subsequent report submitted by the police u/s 173(8) of the Code. Here is not a case where the Chief Judicial Magistrate refused to exercise power u/s 173 of the Code on the ground that the cognizance has already been taken rather from perusal of the impugned order it appears that the learned Magistrate has considered the entire facts of the case and also the evidence came on the record during investigation. Learned court below took into consideration the fact that the allegations of assault on Indu Kumari and first aid given to her by the Doctor was substantiated by the seizure of the prescriptions by the police. Learned Magistrate also took into consideration, the

statement of the witnesses recorded u/s 161 of the Code to the effect that the deceased received injury on her person by means of Bhala and the said injury was substantiated by autopsy report available on the record. Learned Magistrate also took into notice of the supervision note of the Dy. S.P. Sonapur and the S.P. Saran where the involvement of the accused was found. The court below, therefore, on the basis of the materials on record came to the conclusion that both the cases filed by the informant Nand Kishore Singh and the case filed by the I.O. on his own Fard-beyan against the informant and his companion for the alleged murder of Indu Kumari should be put on trial together so that justice would be made available to the concerned party. In my opinion, therefore, the decisions cited by the learned Counsel do not apply. In the facts and circumstances of the case, I do not find grave error of law in the impugned order passed by the court below inasmuch as the court below has exercised power u/s 173 of the Code and found that it is not a fit case where the Petitioners should be exonerated at this stage.

5. Having regard to the facts and circumstances of the case, I do not find any reason to interfere with the order passed by the court below. This application is dismissed.