

**(2012) 01 PAT CK 0038**

**In the Patna High Court**

**Case No :** Criminal Miscellaneous No. 18057 of 2008

Madan Tiwary and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

**Date of Decision :** 30-01-2012

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 204, 482  
Penal Code, 1860 (IPC) — Section 302, 328, 34

**Citation :** (2012) 1 PLJR 755

**Hon'ble Judges :** Rajendra Kumar Mishra, J

**Bench :** Single Bench

**Advocate :** Arun Kumar Pandey, for the Appellant; Dashrath Mehta, State and Mr. Dhanendra Choubey, O.P. No. 2, for the Respondent

**Final Decision :** Allowed

## Judgement

Rajendra Kumar Mishra, J.—The petitioners have approached this Court invoking inherent jurisdiction u/s 482 of the Code of Criminal Procedure to quash the order dated 30.1.2008 passed by the Chief Judicial Magistrate, Motihari, in Govindganj P.S. Case No. 118 of 2007/Trial No. 3044 of 2008, taking cognizance of the offence under Sections 328 and 302/34 of the Indian Penal Code against the accused-petitioners. In brief, the case is that on the basis of the written report of the informant-opposite party no. 2, Hakim Mian, Govindganj P.S. Case No.118 of 2007 was instituted on 28.10.2007 under Sections 302 and 328/34 of the Indian Penal Code against the accused-petitioners. It is alleged by the informant-opposite party no. 2 in the written report that his son, Saheb Alam, aged about 22 years, was driving the Commander Jeep for the last three years of the accused-petitioner no. 1, Madan Tiwary, residing at his house. On 28.10.2007 at about 4 A.M. in the morning, the petitioner no. 1, Madan Tiwary, came at the house of opposite party no. 2 carrying the dead body on ambulance and informed him that his son, Saheb Alam, in the preceding night at about 10 P.M. had consumed the poison and he was taken for treatment but he could not be saved and died. It is further alleged by the informant-opposite party no. 2

that he came in suspicion on the statement of the petitioner no. 1, Madan Tiwary, because if his son, Saheb Alam, had consumed poison, why his sasural's people, whose village are situated nearby were not informed. As such, he is in believe that his son, Saheb Alam, has been murdered by the petitioner no. 1, Madan Tiwary and his son, petitioner no. 2, Vishnu Kant Tiwary alias Pappu Tiwary.

2. The police on investigation submitted the final form finding the lack of evidence before the Court of the Chief Judicial Magistrate, Motihari. Thereafter, the Chief Judicial Magistrate, Motihari, differing with the final form took the cognizance of the offence under Sections 328 and 302/34 of the Indian Penal Code against the accused-petitioners, named in column 16 of the F.I.R., differing with the final form submitted by the Investigating Officer.

3. Learned counsel appearing on behalf of the petitioners made submission that there is nothing against the petitioners in the case diary except suspicion raised by the informant-opposite party no. 2 and the witnesses, as examined in course of investigation, but the Chief Judicial Magistrate, Motihari, illegally took the cognizance of the offence under Sections 328 and 302/34 of the Indian Penal Code against the petitioners differing with the final form submitted by the Investigating Officer. It has also been submitted that the paragraphs of the case diary, as detailed in the impugned order, are nothing but the statements of the informant-opposite party no. 2 and the other witnesses in which only suspicion has been raised against the petitioners to commit the murder of the deceased, Saheb Alam, the son of the informant-opposite party no. 2.

4. On the other hand, learned A.P.P. for the State while made submission that the points, as raised by the learned counsel appearing on behalf of the petitioners, can be raised at the time of framing of charge, but conceded that in the case diary the informant-opposite party no. 2 and the witnesses have only raised suspicion against the petitioners. Learned counsel appearing on behalf of the opposite party no. 2 also conceded that except suspicion raised by the informant-opposite party no. 2 and the witnesses, as detailed in the impugned order, there is nothing in the case diary to show the prima facie case against the petitioners.

5. On perusal of the impugned order, it appears that the Chief Judicial Magistrate, Motihari, differing with the final form, as submitted by the Investigating Officer, has taken the cognizance of the offence under Sections 328 and 302/34 of the Indian Penal Code against the petitioners, named in the F.I.R., detailing the para-graphs-3, 4, 5, 19, 20 and 51 of the case diary. Paragraphs-3, 5, 19 and 20 of the case diary are the statements of the informant and the other witnesses, who only raised suspicion against the petitioners. Paragraph-4 of the case diary is the inquest report of the deceased, Saheb Alam, which does not disclose about the external injury and similarly, in paragraph 51 of the case diary, in which the post mortem report is detailed, no external injury was found and the opinion regarding the cause of the death of the deceased was kept reserve till the receiving of the viscera report.

6. It is no doubt that on submission of the final form by the Investigating Officer finding the case false, the Magistrate/court, having jurisdiction to take cognizance, may differ with the final form and take the cognizance of the offence and summon the accused u/s 204 of the Code of Criminal Procedure if police report indicates prima facie case either showing the commission of offence by the accused or grave doubt raised against the accused that they might have committed the offence. The material collected by the Investigating Officer is very weak only to show slight suspicion against the accused-petitioners. As such, on slight suspicion taking the cognizance of the offence through the impugned order against the petitioners would be an abuse of the process of the court. Under the aforesaid facts and circumstances, the impugned order dated 30.1.2008 passed by the Chief Judicial Magistrate, Motihari, in Govindganj P.S. Case No. 118 of 2007/Trial No. 3044 of 2008 is hereby quashed and the application is allowed.