
(1995) 12 PAT CK 0027

In the Patna High Court

Case No : Criminal Misc. Case No. 3001 of 1995 (R)

Raj Mangal Singh and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 22-12-1995

Acts Referred:

Citation : (1995) 12 PAT CK 0027

Final Decision : Dismissed

Judgement

S.K. Chattopadhyaya, J.—The order taking cognizance dated 24.2.1995 under various sections of the Penal Code is being impugned in this application u/s 482 Cr. P.C. A prayer has also made to quash all subsequent proceedings against the petitioners.

2. The opposite party No. 2 lodged an FIR alleging, inter alia, that the petitioners alongwith 50-60 persons forming an unlawful assembly armed with lethal weapons, including fire arms, illegally trespassed into the house of the informant. Their main intention was to disclose the informant from his possession from the house and landed property. While entering the premises, they also resorted to fire and forcibly looted household goods of the informant namely Sankar Prasad. One Laloo Babu was assaulted when he tried to resist. The occurrence, it is further alleged, took place in presence of the police personnel, who were posted at the place of occurrence for protection to the informant. Named witnesses had seen the occurrence.

3. On the basis of aforesaid FIR, Dhanbad P.S. Case No. 564/86 was registered under Sections 147 148 149 323 447 and 380 of the Indian Penal Code read with Section 27 of the Arms Act and the police started investigation.

However, after completion of the investigation, final report u/s 173 of the Code was submitted on 31.7.1987 indicating that the allegation made in the FIR was out and out a civil dispute. On 13.4.1988 the said report was received in the court of CJM.

4. The Opposite party No. 2 filed a protest petition on 31.8.1989 contending, inter alia, that the investigation officer did not properly investigate the allegation made by him. It was prayed that the final report so submitted by the police may be rejected. By impugned order dated 24.2.1995 the learned Chief Judicial Magistrate while taking into consideration the statements of the witnesses as mentioned in the case diary, came to a conclusion that the investigation officer had wrongly submitted final report in this case. The court below was satisfied that a prima facie case has been made out for the offence mentioned in the FIR, Being satisfied he rejected the final report submitted by the investigation officer and took cognizance of the offence and transferred the same to file of another Judicial Magistrate for disposal in accordance with law.

5. Mr. R.S. Mazumdar, learned Counsel appearing on behalf of the petitioners, has contended that the CJM has committed grave error of law in perusing the case diary and other documents while taking cognizance on the basis of a protest petition. In support of his contention he has relied upon the decisions reported in Anil Kumar Sinha Vs. State of Bihar and Others His second contention is that the allegations made in the FIR, even considered in its face value, make out a case of civil dispute and as such, continuation of the proceeding against the petitioners will be an abuse of the process of Court.

6. Mr. Anil Kumar Sinha, learned Counsel appearing on behalf of the opposite parties, on the other hand, contended that the court was well within its jurisdiction in perusing the complaint petition and rejecting the final form submitted by the investigation officer. According to him, there is no bar in taking cognizance on the basis of a protest petition and in order to appreciate the contents of the protest petition the learned CJM was required to peruse the case diary to find out as to whether the protest petition filed by the opposite party No. 2 was a frivolous or not. His contention is that in the protest petition the opposite party No. 2 while challenging the final form, has prayed to treat the protest petition as a complaint petition and in such view of the matter, the order of the Magistrate cannot be said to be without jurisdiction. Lastly it is contended that the allegations made in the FIR make out a case of criminal offences and as such the order taking cognizance should not be interfered by this Court.

7. It appears that after receiving the final form submitted by the I.O. a notice was issued to the informant calling upon him to appear and show cause as to why the final report submitted by the police be not accepted. On being noticed, the informant filed a protest petition praying therein to treat the same as a complaint. The informant/complainant was heard by the Magistrate and after perusal the entire police case diary, he prima facie found the commission of offence under Sections 446 380 149 148 147 and 323 IPC read with Section 27 of the Arms Act.

8. In the case of Gajendra Swaroop Srivastava v. Baleshwar Prasad Kesari, reported in 1987 BBCJ 792 : 1987 BLJR 712 (FB), a Full Bench of this Court had occasion to consider the import of Clauses (a), (b) and (c) of Sub-section (1) of

Section 190 Cr. P.C. and their lordships while agreeing with another Full Bench decision of this Court in the case of *Bharat Kishore Lal Singh Deo v. Judhistir Modak*, reported in AIR 1929 Patna 473, have held that Clauses (a)(b) and (c) of Sub-section (1) of Section 190 Cr. P.C. pertaining to the cognizance of offence by the Magistrate under the said Section are not mutually exclusive. Their Lordships further observed that at least for the purposes of taking cognizance there is no water tight compartmentalisation of the said clauses under which a Magistrate may choose to issue process. Therefore, according to their Lordships, any hermetic sealing or compartmentalisation of Clauses (a)(b) and (c) of Sub-section (1) of Section 190 and holding that these are mutually exclusive is neither justified on principle nor on authority.

9. The argument of Mr. Mazumdar that when a complaint petition was filed, the Magistrate was not entitled to peruse the case diary and other documents, in my opinion, has not merit and is fit to be rejected. This aspect has also been dealt with by their Lordships in the aforesaid decision of *Gajendra Swaroop (supra)*. The Full Bench relied on the decision of the Supreme Court in the case *Hareram Satpathy Vs. Tikaram Agarwala and Others*, where their Lordships of the Supreme Court have held that even on a complaint it would be open to the Magistrate to peruse the proceeding before the Police including statements u/s 161 of the Criminal Procedure Code for the purpose of issuing process.

10. In the instant case, a protest petition being filed, the Magistrate heard the informant/complainant and perused the case diary and as such, in my opinion, the order taking cognizance cannot be said to be illegal.

11. It is now well settled that Section 203 Cr. P.C. mandates that in every case in which the Magistrate dismisses the complaint therein, he must briefly record the reasons for doing so, which means that the materials for consideration and the reasons for acting thereon for the purposes of dismissal. On the other hand, Section 204 Cr. P.C. makes no statutory requirement of recording any detailed or brief reasons for the issue of process. For issuing of process the hands of the Magistrate are not fettered as to the materials he would look into for the formation of his opinion nor is the power to summon shackled with any elaboration of detailed reasons for doing so.

12. In the case of *Anil Kumar Sinha v. The State of Bihar* reported in 1994 BBCJ 416 : (1995) 1 BLJR 435 on which strong reliance has been placed by Mr. Mazumdar, in my opinion, is misplaced in the facts and circumstances of this case. In the case of *Anil Kumar (supra)*, after the police submitted final form, the informant filed a petition/complaint petition with a prayer to treat the same as a complaint case. The Magistrate did not examine the complainant on oath u/s 200 of the Code and without examining the materials of the evidences, wrongly dismissed the protest/complaint petition. In those circumstances, a learned Single Judge of this Court quashed the impugned order. On the other hand, in the instant case, the Magistrate has not dismissed the complaint petition rather has taken cognizance after examining the complainant and perusing the case

diary. In such view of the matter, it cannot be said that the Magistrate has committed any illegality by perusing the case diary while taking cognizance even in a case where a protest petition was filed.

13. In the result, I find no merit in this application and the same is dismissed. The interim order dated 9.8.1995 is vacated and the Judicial Magistrate. Dhanbad is directed to proceed with the matter in accordance with law forthwith.