

(2019) 09 PAT CK 0053

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1287 Of 2019

Ram Kishore Ishwar

APPELLANT

Vs

State Of Bihar Through And Ors

RESPONDENT

Date of Decision : 09-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 134, 166, 166A, 168, 323, 504
Code Of Criminal Procedure, 1973 — Section 154, 154(1), 154(3), 156, 156(3), 173, 190, 202
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 09 PAT CK 0053

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Madan Prasad Singh, Sanjay Kumar Ghosarvey

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for directing the respondents to institute first information report (for short 'FIR') by the S.H.O., Sajaur Police Station as per direction of the learned Chief Judicial Magistrate, Bhagalpur vide his order dated 20.04.2015 on the basis of a complaint, which was filed on 28.02.2015 under Sections 323, 504, 166, 166-A, 168, 134 and 120-B of the Indian Penal Code.
3. Learned counsel appearing for the petitioner submitted that a complaint was filed by the petitioner on 28.02.2015 vide Complaint Case No. 418 of 2015. On 03.03.2015, the learned Chief Judicial Magistrate called for a report from the Officer-in-charge of Kajreili Police Station and the Assistant Director, Mining and Geology Department, Bhagalpur regarding the claim made in respect of the vehicle bearing No. BR-51/7821 and the case was adjourned to 16.03.2015. On 16.03.2015, the Assistant Director, Mining and Geology Department, Bhagalpur submitted a report, which was ordered to be kept on record. It was recorded by

the learned Chief Judicial Magistrate that the report from the Officer-in-charge Kajreili Police Station was still wanting. Hence, the case was adjourned to 04.04.2015. On 04.04.2015, the case was adjourned to 20.04.2015. On 20.04.2015, the learned Chief Judicial Magistrate recorded in his order that the report sought for from the Officer-in-charge Kajreili Police Station was not received. On the same day, he referred the complaint to the Police for investigation in exercise of power conferred under Section 156(3) of the Code of Criminal Procedure (for short 'Cr.P.C'). It is contended that after the order dated 20.04.2015 was passed by the court of Chief Judicial Magistrate, the investigation has not commenced and the police case is yet to be registered.

4. Having heard learned counsel for the petitioner, I find that the complaint in question was filed by the petitioner Ram Kishore Ishwar on 28.02.2015. The learned Chief Judicial Magistrate did not think it proper to refer the complaint to the police for investigation under Section 156(3) of the Cr.P.C at the initial stage. He proceeded with the complaint and called for a report from the Officer-in-charge of Kajreili Police Station and the Assistant Director, Mining and Geology Department, Bhagalpur. In absence of any report from the Officer-in-charge, Kajreili Police Station, after adjourning the case several times awaiting the report, the learned Chief Judicial Magistrate vide order dated 20.04.2015 referred the complaint to the police for conducting investigation in exercise of power conferred under sub-section (3) of Section 156 of the Cr.P.C. The grievance of the petitioner is that in spite of specific direction made by the learned Chief Judicial Magistrate vide order dated 20.04.2015, no FIR has been registered as yet.

5. In the background of the facts noted above, it would be necessary to examine first as to whether the learned Chief Judicial Magistrate was justified in sending the complaint to the police in exercise of power conferred under Section 156(3) of the Cr.P.C.

6. Chapter XII of the Cr.P.C deals with the powers of the Police Officer to investigate a cognizable offence. It contains provisions relating to information to the police and their powers to investigate.

7. Section 154 of the Cr.P.C under Chapter XII enables every person, who intends to report relating to commission of a cognizable offence to approach an officer-in-charge of a police station, who then is required to reduce such information in writing and to register an FIR, as provided for under Section 154(1) of the Cr.P.C. However, if an officer-in-charge of a police station refuses to register an FIR, the person aggrieved may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied with such information discloses commission of a cognizable offence, shall either investigate the case himself or direct investigation made by any police officer subordinate to him in view of the provisions contained under Section 154 (3) of the Cr.P.C. Once the FIR is registered, the criminal law is set in motion which would mean investigation under Section 156 of the Cr.P.C till filing of the police report under

Section 173 of the Cr.P.C.

8. Section 156 under Chapter XII of the Cr.P.C gives police officer powers to investigate cognizable offence. It reads as under:

"(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

9. Thus, it would be incumbent upon an officer-in-charge of a police station to investigate a case in case an order in this regard is passed by a Magistrate in exercise of powers conferred under sub-section (3) of Section 156 of the Cr.P.C.

10. Chapter XV of the Cr.P.C deals with complaints to the Magistrate. In case of a complaint of an offence, any Magistrate may, if he thinks fit, postpone issuance of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer or by such other persons as he thinks proper for the purpose of deciding whether there is sufficient ground for proceeding.

11. In the instant case, after filing of the complaint, initially, the learned Chief Judicial Magistrate called for a report from the Officer-in-charge of Kajreili Police Station and the Assistant Director, Mining and Geology Department, Bhagalpur, which would mean that he had taken recourse to inquiry as prescribed under Section 202 of the Cr.P.C. Once the learned Chief Judicial Magistrate had decided to inquire into the allegations made in the complaint, it was not open to him to direct for investigation into the allegation made in the complaint in exercise of powers conferred under sub-section (3) of Section 156 of the Cr.P.C. The manner in which the order under Section 156(3) of the Cr.P.C has been passed makes the same unsustainable in law. The procedure adopted by the learned Chief Judicial Magistrate in directing the police to investigate the case was patently bad.

12. In that view of the matter, this Court is of the opinion that no direction can be issued to the respondents to institute an FIR on the basis of an illegal order passed by the court of Chief Judicial Magistrate.

13. Accordingly, the order dated 20.04.2015 passed by the learned Chief Judicial Magistrate, Bhagalpur in Complaint Case No. 418 of 2015 is set aside. As a consequence thereof, no direction is required to be issued to the respondents to institute an FIR pursuant to the order passed by the learned Chief Judicial Magistrate, Bhagalpur in Complaint Case No. 418 of 2015.

14. The application, being devoid of any merit, is dismissed.