

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48680 of 2014

Arising Out of PS. Case No.-557 Year-2012 Thana- NAWADA District- Nawada

Sanjay Kumar Singh, S/o- Triveni Singh, Resident of Moh- New Area
Proprietor T.K Automobile (Dealer Swaraj Tractor), P.S.- Nawada Town Dist.-
Nawada

... .. Petitioner/s

Versus

1. The State of Bihar
2. Anil Singh, S/o- Ram Sharan Singh, Moh- Kulma P.S.- Akbarpur Nawada,
presently residing at- New Area P.S.- Nawada Town, Dist- Nawada
3. Sambhu Singh, S/o- Ram Sharan Singh, Moh- Kulma P.S.- Akbarpur
Nawada, presently residing at- New Area P.S.- Nawada Town Dist- Nawada
4. Surendra Singh, S/o- Ram Sharan Singh, Moh- Kulma P.S.- Akbarpur
Nawada, presently residing at- New Area P.S.- Nawada Town, Dist- Nawada
5. Diwakar Singh, S/o- Sambhu Singh, Moh- Kulma P.S.- Akbarpur Nawada,
presently residing at- New Area P.S.- Nawada Town, Dist- Nawada
6. Shiwan Singh, S/o- Umesh Singh, R/o- Dumrawan P.S.- Pakari Wasawan
Dist- Nawada, presently residing at- New Area, Nawada in the house of
Vinay Singh
7. Umesh Singh, S/o- Late Ramchandra Singh, R/o- Dumrawan P.S.- Pakari
Wasawan Dist- Nawada, presently residing at- New Area, Nawada in the
house of Vinay Singh
8. Uday Singh, S/o- Ram Autar Singh, Resident of Village- Lokhmohana P.S.-
Akbarpur, Dist- Nawada
9. Chun Chun Singh, S/o- Uday Singh, Resident of Village- Lokhmohana P.S.-
Akbarpur, Dist- Nawada, presently residing at New Area, Nawada Dist-
Nawada
10. Ramanuj Singh, S/o- Lal Narayan Singh, Village- Bedhauna P.S.- Hisua
Dist- Nawada, Presently Residing at Behind Chaurasia College
11. Ajay Singh, S/o- Srikant Singh, Village- Hosut, P.S.- Pakri Wasawan,
presently residing at New Area, Nawada Dist- Nawada

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
Mr. Suman Kumar, Advocate
For the O.P. No.2 to 11 : Mr. Hans Raj, Advocate
For the State : Mr. Binod Kumar No.3, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 25-03-2025



Heard Mr. Sanjay Kumar, learned counsel for the petitioner, Mr. Hans Raj, learned counsel for the O.P. No. 2 to 11 and Mr. Binod Kumar No. 3, learned APP for the State.

2. The instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C. ') with a prayer to quash the order dated 25.07.2014 passed by the court of learned Chief Judicial Magistrate, Nawada in connection with Nagar P.S. Case No. 557 of 2012 dated 18.10.2012 registered for the offences under Sections 147, 148, 149, 448, 379, 435, 436, 427, 307 of the Indian Penal Code (in short 'IPC') and Section 27 of the Arms Act whereby the learned Chief Judicial Magistrate, Nawada accepted the final form, exonerating the O.P. No. 2 to 11 by the police.

3. Mr. Sanjay Kumar, learned counsel appearing for the petitioner submits that the instant matter relates to the serious offences of mischief committed by fire, attempt to murder, riot, using the firearm and destroying the several motorcycles and tractors as well as stealing several mobile phones etc. The O.P. No. 2 to 11 are named in the FIR and altogether twenty accused persons including the said OPs were named by the informant in the said FIR. The O.P. No. 2 to 11 actively participated in the commission of the alleged offences and the important witnesses



including the informant whose details has been given in the FIR as having witnessed the entire occurrence, were examined by the investigating officer who revealed the presence of the O.P. No. 2 to 11 as being present at the place of occurrence and being involved with the co-accused persons. Ten accused persons named in the FIR were apprehended at the spot and the police chargesheeted them but exonerated the O.P. No. 2 to 11 by not sending them up while they were equally involved in the alleged occurrence and their names find place in the FIR and the material witnesses who claimed to have witnessed the occurrence, fully supported the allegations levelled against the said OPs in the FIR. The police mainly relied upon the statements of some witnesses who are said to be independent persons but their presence at the place of occurrence as claimed by them, is completely doubtful. Learned counsel further submits that during investigation, the petitioner filed a protest petition dated 09.11.2012 due to non-action against the named accused and the police report was filed on 28.02.2014 chargesheeting the co-accused who were apprehended at the spot and not sending up the O.P. No. 2 to 11 but before that, the petitioner had filed his protest petition and after the submission of the police report he again filed his protest petition dated 17.06.2014 against the police conclusion for not sending up the



O.P. No. 2 to 11 and prayed for to take cognizance against all the named accused persons and the copies of the said protest petitions have been filed as Annexure-3 and Annexure-4. As such, it is clearly evident that at the time of passing the impugned order relating to cognizance on the police report, the protest petition filed by the petitioner was on the record but the same was not taken into consideration which is completely a violation of the law settled by the Hon'ble Apex Court in various judgments. It is lastly submitted that before accepting the police report as to not sending up the O.P. No. 2 to 11, the learned Magistrate did not take any pain to give the petitioner an opportunity of hearing by getting his appearance through the service of notice and in this regard, the impugned order may be perused which is also a violation of the settled position of law.

4. In support of the aforesaid submissions, learned counsel has placed reliance upon the following judgments of the Hon'ble Apex Court:-

(i) Bhagwant Singh vs. Commissioner of Police and Another reported in **(1985) 2 SCC 537** and the relevant paragraph no. 4 upon which reliance has been placed is being reproduced as under:-

“ 4. Now, when the report forwarded by the officer-in-charge of a police station to the



Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the first



information report, the informant would certainly be prejudiced because the first information report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the first information report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the first information report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer-in-charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay



on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the first information report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of Section 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.”

(ii) Dharam Pal and Others vs. State of Haryana and Another reported in **(2014) 3 SCC 306** and the relevant paragraphs no. 34 to 36 upon which reliance has been placed are being reproduced as under :-

“**34.** The view expressed in *Kishun Singh case* [*Kishun Singh v. State of Bihar*, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] , in our view, is more acceptable since, as has been held by this Court in the cases referred to hereinbefore, the Magistrate has ample powers to disagree with the final report that may be filed by the police authorities under Section 173(2) of the Code and to proceed against the accused persons de hors the police report, which power the Sessions Court does not have till the Section 319 stage is reached. The upshot of the said situation would be that even though the Magistrate



had powers to disagree with the police report filed under Section 173(2) of the Code, he was helpless in taking recourse to such a course of action while the Sessions Judge was also unable to proceed against any person, other than the accused sent up for trial, till such time evidence had been adduced and the witnesses had been cross-examined on behalf of the accused.

35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) CrPC. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

36. This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Sessions Court.”



(iii) Vishnu Kumar Tiwari vs. State of Uttar Pradesh
Through Secretary Home Civil Secretariat Lucknow and
Another reported in **(2019) 8 SCC 27** and the relevant paragraph nos. 27 and 43 upon which reliance has been placed, are being reproduced as under:-

“27. It is undoubtedly true that before a Magistrate proceeds to accept a final report under Section 173 and exonerate the accused, it is incumbent upon the Magistrate to apply his mind to the contents of the protest petition and arrive at a conclusion thereafter. While the investigating officer may rest content by producing the final report, which, according to him, is the culmination of his efforts, the duty of the Magistrate is not one limited to readily accepting the final report. It is incumbent upon him to go through the materials, and after hearing the complainant and considering the contents of the protest petition, finally decide the future course of action to be, whether to continue with the matter or to bring the curtains down.

43. It is true that law mandates notice to the informant/complainant where the Magistrate contemplates accepting the final report. On receipt of notice, the informant may address the court ventilating his objections to the final report. This he usually does in the form of the protest petition. In *Mahabir Prasad Agarwala v. State* [*Mahabir Prasad Agarwala v. State*, 1957 SCC OnLine Ori 5 : AIR 1958 Ori 11] , a learned Judge of the High Court of Orissa, took the view that a protest petition is in the nature of a complaint and should be examined in accordance with the provisions of



Chapter XVI of the Criminal Procedure Code. We, however, also noticed that in *Qasim v. State* [*Qasim v. State*, 1984 SCC OnLine All 260 : 1984 Cri LJ 1677] , a learned Single Judge of the High Court of Judicature at Allahabad, inter alia, held as follows: (*Qasim case* [*Qasim v. State*, 1984 SCC OnLine All 260 : 1984 Cri LJ 1677] , SCC OnLine All para 6)

“6. ... In *Abhinandan Jha* [*Abhinandan Jha v. Dinesh Mishra*, AIR 1968 SC 117 : 1968 Cri LJ 97 : (1967) 3 SCR 668] also what was observed was “it is not very clear as to whether the Magistrate has chosen to treat the protest petition as complaint”. This observation would not mean that every protest petition must necessarily be treated as a complaint whether it satisfies the conditions of the complaint or not. *A private complaint is to contain a complete list of witnesses to be examined.* A further examination of complainant is made under Section 200 CrPC. If the Magistrate did not treat the protest petition as a complaint, the protest petition not satisfying all the conditions of the complaint to his mind, it would not mean that the case has become a complaint case. *In fact, in majority of cases when a final report is submitted, the Magistrate has to simply consider whether on the materials in the case diary no case is made out as to accept the final report or whether case diary discloses a prima facie case as to take cognizance. The protest petition in such situation simply serves the purpose of drawing Magistrate's attention to the materials in the case diary and invite a careful scrutiny and exercise of the mind by the Magistrate so it cannot be held that*



simply because there is a protest petition the case is to become a complaint case.”

(iv) Amish Devgan vs. Union of India and Others

reported in **(2021) 1 SCC 1** and the relevant paragraph no. 124 upon which reliance has been placed is being reproduced as under:-

“**124.** This would be fair and just to the other complainants at whose behest the other FIRs were caused to be registered, for they would be in a position to file a protest petition in case a closure/final report is filed by the police. Upon filing of such protest petition, the Magistrate would be obliged to consider their contention(s), and may even reject the closure/final report and take cognizance of the offence and issue summons to the accused. Otherwise, such complainants would face difficulty in contesting the closure report before the Magistrate, despite and even if there is enough material to make out a case of commission of an offence.”

5. On the other hand, Mr. Hans Raj, learned counsel appearing for the O.P. Nos. 2 to 11 submits that as per the Section 190 (1) of Cr.P.C., the Magistrate’s power of taking cognizance is completely discretionary and the same has been rightly exercised by the learned Chief Judicial Magistrate while passing the order impugned, if the petitioner has some grievance then he will have



sufficient opportunity to raise his grievance before the trial court under Section 319 of Cr.P.C. if sufficient and strong evidences appear against the OPs from the prosecution's evidences showing them being involved in the commission of the alleged occurrence. He further submits that the OPs were not present at the place of occurrence and they were made accused with malafide intention and during investigation, all the independent witnesses said that the OPs were not present at the place of occurrence when the offences are alleged to have been committed and further, in respect of the involvement of the OPs in the alleged occurrence, the investigating officer investigated the matter on the basis of technical evidence relating to the mobile tower location of the OPs which goes in favour of the OPs and in this regard, sufficient material is available in the case diary.

6. Heard both the sides, perused the order impugned and other relevant materials. The instant matter relates to the serious offences and the O.P. No. 2 to 11 are named in the FIR and the police did not send up the OPs merely believing the statements of some persons who are said to be independent persons but on the other hand, the material witnesses whose detail is mentioned in the FIR supported the informant's allegation made by him against the OPs in the FIR. Admittedly, the informant had filed two protest



petitions first during the course of investigation and second after the submission of police report and it is a settled position of law that upon filing of such protest petition, the Magistrate would be obliged to consider the contentions and pleas taken by the informant in his protest petition. Upon such protest petition, the Magistrate can either dismiss it or proceed treating it as a complaint or take cognizance on the basis of the materials available in the case diary in respect of an accused who has not been sent up or an order of re-investigation can be passed but one thing is quite clear in this matter that the learned Magistrate did not take into account the protest petition filed by the petitioner while accepting the police report in respect of the O.P. Nos. 2 to 11 and from the order impugned, it also does not appear that any attempt was taken by the learned Magistrate to inform the informant/petitioner about the police conclusion as to not sending up the O.P. Nos. 2 to 11 and the said approach of the Magistrate is completely in violation of the above-mentioned principles laid down by the Hon'ble Apex Court in the aforesaid cited judgments. So, mainly considering this aspect, this Court finds the order impugned to be not legal in respect of the O.P. Nos. 2 to 11 hence, it is set aside only to the extent of O.P. Nos. 2 to 11 and the learned Magistrate is directed to pass a fresh order in respect of the said OPs



after giving the petitioner sufficient opportunity of hearing on his protest petition and thereafter, pass an appropriate and reasoned order on the point of cognizance in respect of the O.P. Nos. 2 to 11 without being prejudiced with this order, according to merit and the Magistrate must proceed in the light of the aforesaid principles laid down by the Hon'ble Apex Court.

7. In the result, the instant petition stands allowed.

(Shailendra Singh, J)

maynaz/-

AFR/NAFR	AFR
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