

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22855 of 2016**

Arising Out of PS. Case No.-84 Year-2015 Thana- KATIHAR COMPLAINT CASE District-
Katihar

-
1. Dharmendra Kumar @ Dharmendra Kumar Singh, Son of Nagendra Prasad Singh.
 2. Panchanand Singh, Son of Late Rudal Singh
 3. Brij Mohan Singh @ Birju, Son of Panchanand Singh,
All resident of Mohalla- Larkania Tola Police Station- Katihar Town,
District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Chandra Sekhar, son of Late Ram Chandra Ray, Resident of Mohalla-
Larkania Tola, P.O.- Katihar, P.S.- Katihar Town, District- Katihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Jibendra Mishra, Adv.
For the O.P. No. 2	:	Mr. Rananjay Kumar, Adv. Mr. H.C. Patel, Adv.
For the State	:	Mr. Raj Ballabh Singh, APP

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT**

Date : 05-02-2026

Heard learned counsel for the petitioners, learned counsel for the O.P. No.2 and learned APP for the State.

2. The instant criminal miscellaneous petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”), by the petitioners seeking quashing of the order dated 30.04.2015 passed by the Court of the Judicial Magistrate, 1st Class, Katihar, in Complaint Case No. C.A. 84 of 2015, whereby the learned Magistrate has taken cognizance of offences punishable



under Sections 448, 323, 379, and 504 of the Indian Penal Code (hereinafter referred to as “IPC”) and summoned the petitioners to face trial for the said offences. The aforesaid order taking cognizance is under challenge in the present quashing application.

Arguments on behalf of the petitioners:-

3. Mr. Jibendra Mishra, learned counsel appearing for the petitioners, has submitted that the impugned order is wholly unsustainable in the eye of law, being contrary to the principles laid down by this Court in ***Surendra Pandit @ Soren Pandit & Ors. v. State of Bihar & Anr.***, passed in **Cr. Misc. No. 42389 of 2012**. The relevant paragraph, upon which reliance has been placed, is reproduced hereinbelow:

"As properly advised, the 2nd respondent filed a protest petition. The concerned Court could have weighed the pros and cons of the final report, on the one hand, and the protest petition, on the other hand, and taken a decision in this behalf. Even from perusal of the order challenged in this petition, it is evident that the trial Court accepted the final report, despite there being a protest petition. It only means that protest petition was not found to be acceptable.

Once the final report was accepted, the



proceeding referable to the FIR stand terminated. If the second respondent was aggrieved on account of the acceptance of the final report filed by the police, he ought to have approached this Court by instituting appropriate proceedings. However, on his insistence, the protest petition was treated as a complaint under Section 200 Cr.P.C. Whatever be the possibility for the protest petition being treated as a complaint under Section 200 Cr.P.C., once the final report has been accepted, the question of keeping the matter alive through a different channel does not arise."

3.1. While referring to the aforesaid paragraph of the cited judgment, learned counsel for the petitioners has submitted that there existed a relationship of landlord and tenant between the petitioners and Opposite Party No. 2 during the relevant period. It has further been contended that Opposite Party No. 2 had initially lodged Katihar P.S. Case No. 86 of 2014 alleging commission of offences punishable under Sections 406, 420, 120(B), 452, 379, 504/34 of the IPC and Sections 24 and 25 of the Arms Act. The said case was investigated, and upon completion of investigation, the police submitted a final form



concluding that the dispute between the parties was of a civil nature and, accordingly, the petitioners were not sent up for trial. Thereafter, the learned Magistrate accepted the final form despite the filing of a protest petition. In view of the principles laid down by this Court in the case of *Surendra Pandit (supra)*, the said protest petition ought to be deemed as having been not accepted; however, the learned Magistrate proceeded further on said protest petition and, after examining the inquiry witnesses, took cognizance of the alleged offences by passing the impugned order.

3.2. It has been further submitted that, in fact, there is no eyewitness to the alleged occurrence. All the witnesses cited in the protest petition and examined before the learned Magistrate during the course of inquiry at the instance of Opposite Party No. 2 are close relatives of Opposite Party No. 2.

Arguments on behalf of the O.P. No.2:-

4. On the other hand, Mr. Rananjay Kumar, learned counsel appearing for Opposite Party No. 2, has submitted that there is no illegality in the impugned order, as it is well settled that even after accepting the final form, the concerned Magistrate is competent to proceed on the protest petition and take cognizance of the offences if the commission thereof appears from the averments made in the protest petition and is



supported by the statements of the inquiry witnesses. It has further been submitted that there is sufficient material on record to proceed against the petitioners for the offences of which cognizance has been taken.

Consideration and analysis:-

5. I have heard learned counsels for the parties and perused the impugned order as well as the relevant materials on record. During the course of arguments, learned counsel for the petitioners, while placing reliance upon the judgment of this Court in *Surendra Pandit (supra)*, contended that the approach adopted by the learned Magistrate in treating the protest petition filed by Opposite Party No. 2 as a complaint, despite the police having submitted a final report in favour of the petitioners declaring them innocent and the same having been accepted by the learned Magistrate, was improper and contrary to the principles settled by this Court in the aforesaid decision. I find no force in the above contention. It is well settled by a catena of judgments of the Hon'ble Supreme Court that if a protest petition satisfies the requirements of a complaint, the Magistrate is competent to treat the protest petition as a complaint and to proceed in accordance with the procedure prescribed under Sections 200 and 202 of the Cr.P.C. Acceptance of the final



report does not preclude or debar the Magistrate from taking cognizance on the basis of materials brought on record in a complaint proceeding, as the right of the informant/complainant to file a protest petition in the nature of a complaint is not extinguished merely because the final form submitted by the police has been accepted. In this regard, reference may be made to the observations of the Hon'ble Supreme Court in ***Kishore Kumar Gyanchandani v. G.D. Mehrotra & Anr.***, reported in **(2011) 15 SCC 513**, wherein the relevant observations made in paragraph 6 are reproduced hereinbelow:-

"6. It is too well settled that when police after investigation files a final form under Section 173 of the Code, the Magistrate may disagree with the conclusion arrived at by the police and take cognizance in exercise of power under Section 190 of the Code. The Magistrate may not take cognizance and direct further investigation in the matter under Section 156 of the Code. Where the Magistrate accepts the final form submitted by the police, the right of the complainant to file a regular complaint is not taken away and in fact on such a complaint being filed the Magistrate follows the procedure under Section 201 of the Code and takes cognizance if the materials produced by the



complainant make out an offence. This question has been raised and answered by this Court in the case of Gopal Vijay Verma v. Bhuneshwar Prasad Sinha whereunder the view of the Patna High Court to the contrary has been reversed. The Court in no uncertain terms in the aforesaid case has indicated that the acceptance of final form does not debar the Magistrate from taking cognizance on the basis of the materials produced in a complaint proceeding."

6. Thus, the learned Magistrate has not committed any error in treating the protest petition filed by Opposite Party No. 2 as a complaint. Accordingly, there is no substance in the aforesaid contention. The next question for consideration is whether subjecting the petitioners to criminal prosecution for the alleged offences, of which cognizance has been taken, amounts to an abuse of the process of the Court or not. It is an admitted position that during the relevant period of time there existed a relationship of landlord and tenant between the petitioners and Opposite Party No. 2. According to the petitioners, Opposite Party No. 2 was their tenant who had taken the concerned premises on rent but failed to vacate the same. The said dispute might be a reason to commit the alleged occurrence by the petitioners. Opposite Party No. 2 has levelled



several allegations against the petitioners disclosing *prima facie* commission of the alleged offences of which cognizance has been taken as well as petitioners' involvement in the said occurrence. Some of the witnesses cited in the complaint/protest petition were also examined during the course of inquiry, and their statements lend support to the allegations made by Opposite Party No. 2. Although it has been contended by learned counsel for the petitioners that Opposite Party No. 2 is a practicing advocate and that there are certain contradictions between the averments made in the complaint petition and the statements of the inquiry witnesses but the same, at this stage, cannot be made a ground to exonerate the petitioners from the criminal liability arising against them out of the alleged occurrence. It was further submitted during the course of arguments that all the witnesses examined at the instance of Opposite Party No. 2 during the inquiry inimically disposed towards the petitioners. However, the petitioners have failed to disclose the basis or reasons for such alleged enmity, and the said assertion in the present petition is unsupported by any material on record.

Conclusion:-

7. Accordingly, I find no reason to interfere with the



impugned order. The instant petition is, therefore, dismissed on merits.

(Shailendra Singh, J)

Rajiv/-

AFR/NAFR	AFR
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