

Party Name : SHIB TARA MAJUMDER Vs THE STATE OF TRIPURA & ORS

THE HONBLE THE CHIEF JUSTICE T. VAIPHEI

28.04.2017.

Both Mr. S. Lodh, the learned counsel for the petitioner and Mr. S. Sarkar, the learned Public Prosecutor have been heard at length. The main point in this revision petition is whether the learned Chief Judicial Magistrate, South Tripura, Belonia is correct in refusing to take cognizance of the offences charged against the accused after accepting the final report.

The allegations of the petitioner is that the accused persons named in the complaint went to her house with a Search Warrant issued by the Court for recovery of Stridhan articles of Smt. Fulki Biswas in connection with BLN. P.S Case No.236/2014 under Section 406 IPC and had recovered and seized the available Stridhan articles identified by the said Fulki Biswas. At this stage, the version of the police is that the informant and her son Litan Majumder put obstruction to their attempt to recover and seize the aforesaid articles. According to the petitioner, on 11.12.2014, she lodged a written complaint before the learned Chief Judicial Magistrate, Belonia alleging that on 02.12.2014 at about 12.30 p.m., the said accused along with some police personnel and 25/30 muscle men came to her house with a Search Warrant and tried to break the lock of the room of her son, Sri Sripatui Majumder and that when she told them that as her son was not present, they should not break the lock, the accused Nos. 1 and 2 and the police personnel started abusing her with filthy language and the accused Nos. 3, 4, 5 and 6 without any rhyme or reason started beating her younger son by the stock of a rifle and when she tried to rescue her she was also given fist blows by them. According to the petitioner, after breaking the lock of the room, they took all the articles from the room of her son and also took valuable articles of her daughter from her room. She further alleged that the accused also took the motor bike belonging to, and registered in the name of, her son. It is further alleged by her that when she was proceeding towards Belonia Police Station for lodging the complaint, she was arrested by the police and due to their assault, she and her son sustained injuries in various parts of the body and both of them were treated by the doctors of the Belonia Hospital. The treatment certificates are enclosed with the complaint petition. On the basis of the complaint lodged by her, the learned Chief Judicial Magistrate, Belonia sent the complaint under Section 156(3) Cr.P.C. to the Officer-in-Charge of Belonia Police Station for registering the case and conduct investigation. On receipt of the complaint, the police registered Belonia P.S. Case No.09 of 2015 under Sections 447/325/323/379 & 34 IPC and endorsed the case to one Shri Rangadulal Debbarma, Dy. Superintendent of Police for the investigation. The I.O. of the case submitted the Final Report i.e. BLN. FR(F) No.06/16 stating that the allegations of the petitioner are not correct. The learned Magistrate thereafter issued notice upon the petitioner and in response thereto, she filed her protest petition. The protest petition did not meet the desired result. The learned Magistrate ultimately by the impugned order accepted the FR and refused to take cognizance which prompted the petitioner to file this petition.

It is the contention of the learned counsel for the petitioner that the Investigating Officer did not investigate the case properly and did not seize the related objects and only seized some materials which are not even connected with the case and did not even bother to call the statement of her witnesses under Section 161 Cr.P.C. He further submits that the specific allegations made against the accused that they under the guise of undertaking search and seizure illegally took away the motor bike of her son and the gold ornaments of her daughter. According to the learned counsel, she filed copies of the cash memos of the valuable articles and copies of the documents in respect of the motor cycle of her son, which were illegally taken away by the police; no copy of the seizure list was even supplied to her. The further submission of the learned counsel for the petitioner is that even if the Final Report is not accepted by the learned Magistrate, the law requires that on the basis of the protest petition filed by the petitioner, cognizance is to be taken when there are sufficient grounds for proceedings against the accused persons.

I have carefully gone through the impugned order dated 28.06.2016. In my opinion, the learned Chief Judicial Magistrate, did not properly apply his mind to the allegations made by the petitioner in her complaint and protest petition. The petitioner in her complaint has even mentioned the names of the witnesses to substantiate her allegations against the accused. All the witnesses were mentioned by her to be produced by her in the course of trial or inquiry.

The law is now well settled from a catena of the decisions of the Apex Court that after receipt of the police report under Section 173, the Magistrate has three options namely,

- (1) he may decide that there is no sufficient ground for proceeding further and drop action;
- (2) he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report;
- (3) He may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be."

The question to be considered is whether after rejecting the Final Report, the Magistrate can still take cognizance of the offence is no longer res integra. Even if the Final Report is rejected, the Magistrate is not precluded from taking cognizance of the offences on the basis of the complaint lodged by the petitioner provided sufficient ground for proceeding against the accused is made.

On perusal of the complaint petition and the protest petition, the allegations of the petitioner made therein certainly disclose materials for further proceedings against the accused named therein. Therefore, this is a fit case for taking cognizance of the offences even though they may not be sufficient to return a verdict of conviction which can be done only after the trial. In my opinion, the learned Chief Judicial Magistrate has failed to exercise his jurisdiction in not taking cognizance of the offences on the basis of the complaint lodged by the petitioner and has in the process caused grave prejudice to the petitioner.

Resultantly, this revision succeeds. The learned Chief Judicial Magistrate, Belonia, South Tripura is directed to take cognizance of the offences on the basis of the complaint petition/protest petition lodged by the petitioner and proceed with the case in accordance with law by treating the case as a complaint case.

Transmit the L.C. records.

The petitioner is directed to appear before the learned Chief Judicial Magistrate, Belonia, South Tripura on 12th May, 2017.

The petition stands disposed of.