

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.1160 of 2023

1. Anjali Singh aged about 28 years, W/o Rakesh Kumar Singh R/o Village-Hur Huru Co operative Colony, P.O.-Korra, P.S.-Korra, District-Hazaribagh.
2. Bhuneshwar Singh @ Chunnu Singh aged about 61 years, S/o Late Janak Dhari Singh R/o Village-Tiuj, P.O.-Punai, P.S.-Daru, District-Hazaribagh.
3. Adarsh Kumar Singh aged about 23 years, S/o Bhuneshwar Singh, R/o Village-Tiuj, P.O.-Punai, P.S.-Daru, District-Hazaribagh.

... Petitioners

Versus

1. The State of Jharkhand
2. Arvind Kumar S/o Late Kauleshwar Prasad Singh, R/o Village Co operative Colony, Hur Huru, P.O. + P.S.-Korra, District-Hazaribagh.

... Opposite Parties

For the Petitioners	: Mr. Arwind Kumar, Advocate
For the State	: Mr. Sunil Kr. Dubey, Addl.P.P.
For the O.P. No.2	: Mrs. Jasvinder Mazumdar, Advocate
	: Mr. Rohan Mazumdar, Advocate
	: Mrs. Neeharika Mazumdar, Advocate
	: Mr. Naveen Kumar, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal

Procedure with the prayer to quash and set aside the entire criminal proceeding arising out of Korra P.S. Case No.38 of 2019 corresponding to G.R. Case No.444 of 2020 including the order taking cognizance dated 04.02.2021 passed by learned Additional Chief Judicial Magistrate, Hazaribagh whereby and where under the learned Additional Chief Judicial Magistrate, Hazaribagh has taken cognizance for the offences punishable under Sections 452/34 of the Indian Penal Code against the petitioners.

3. This is the second journey of the petitioners with the self-same prayer. Earlier the petitioners filed Cr.M.P. No.2669 of 2020 and the case was remitted since the co-ordinate bench was of the view that the learned Court has taken cognizance in a mechanical manner and set aside the same and directed the concerned Court to pass a fresh order in accordance with law. Accordingly, the learned Additional Chief Judicial Magistrate, Hazaribagh passed an order in compliance with the said order passed by the co-ordinate bench in Cr.M.P. No.2669 of 2020.

4. The allegation against the petitioners is that the petitioners in furtherance of common intention with the co-accused persons committed house trespass after having made preparation for putting the informant in fear of hurt and assault, by entering into the house of the informant by breaking the lock.

5. On the basis of the written report submitted by the informant, police registered Korra P.S. Case No.38 of 2019 and took up investigation of the case. The Police after completion of the investigation submitted

charge sheet against the petitioners for having committed the offences punishable under Section 452 of the Indian Penal Code, but the petitioners for reason best known to it, has suppressed the charge sheet basing upon which the cognizance of the offences has been taken by the learned Additional Chief Judicial Magistrate, Hazaribagh. On the basis of the charge sheet submitted by police, the learned Additional Chief Judicial Magistrate, Hazaribagh has taken cognizance of the offences punishable under Section 452/34 of the Indian Penal Code.

6. Learned counsel for the petitioners submit that police has filed a false police report vide charge sheet no.13 of 2020, the learned Additional Chief Judicial Magistrate, Hazaribagh has taken cognizance of the offences in a purely mechanical manner, hence, it is submitted that the prayer as prayed for by the petitioners in this Cr.M.P., be allowed.

7. Learned Addl.P.P. appearing for the State and the learned counsel for the opposite party No.2 on the other hand vehemently oppose the prayer of the petitioners made in the instant Cr.M.P and submit that when the court takes cognizance of the offence on the basis of the police report, the Magistrate is not required to record reasons for issuing the process. It is next submitted that if a case is made out on the basis of the police report, the Magistrate, at the time of taking cognizance cannot add or subtract a section which has not been mentioned in the charge sheet. It is next submitted that it is not even the case of the petitioners that if the contents of the charge sheet along with the supporting documents filed by the police against the petitioners are considered to be true in their

entirety, then no offence is made out against the petitioners rather it is the case of the petitioners that police has submitted a false report, but the petitioners have deliberately suppressed the same from this Court by not filing the copy of the charge sheet, which he claims to be false. It is lastly submitted that this Cr.M.P., being without any merit, be dismissed.

8. Having heard the submissions made at the Bar and after carefully going through the materials available in the record, so far as the contention of the petitioners that the learned Additional Chief Judicial Magistrate, Hazaribagh has taken cognizance in a purely mechanical manner is concerned, the undisputed facts remains that the allegations made against the petitioners are considered to be true in their entirety, then the offence of house trespass is made out against the petitioners.

9. It is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **State of Gujarat vs. Afroz Mohammed Hasanfatta** reported in (2019) 20 SCC 539, paragraph-23 of which reads as under:-

"23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied

that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon subject to satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file.” (Emphasis supplied)

that in case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason, hence, this Court do not find any merit in the contention of the petitioners that there is no application of mind that in a mechanical manner, the learned Additional Chief Judicial Magistrate, Hazaribagh has taken cognizance of the offences.

10. So far as the offences which are made out against the petitioners are concerned, it is a settled principle of law as has been observed by the Hon'ble Supreme Court of India in the case of **State of Gujarat vs. Girish Radhakrishnan Varde** reported in (2014) 3 SCC 659, paragraph-15 of which reads as under:-

“15. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offences into the charge-sheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the Magistrate before whom the matter comes up for taking cognizance after submission of the charge-sheet and as already stated, the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under Sections 216, 218 or under Section 228 CrPC as the case may be which means that after submission of the charge-sheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the charge-sheet.” (Emphasis supplied)

wherein the Hon’ble Supreme Court of India has observed that the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge.

11. Now coming to the facts of the case, as already indicated above, since the offence of house trespass is made out against the petitioners basing on the materials available in the record, this Court do not find any

illegality in the order dated 04.02.2021 passed by learned Additional Chief Judicial Magistrate, Hazaribagh in Korra P.S. Case No.38 of 2019.

12. Accordingly, this Cr.M.P., being without any merit, is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 21st of January, 2026
AFR/ Abhiraj

Uploaded on 30/01/2026