
(2007) 09 JH CK 0054
In the Jharkhand High Court

Ajibure Sheikh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 225, 226, 227, 228

Explosive Substances Act, 1908 — Section 3, 4, 7

Penal Code, 1860 (IPC) — Section 307, 323, 34, 504

Citation : (2007) 09 JH CK 0054

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Judgement

Amareshwar Sahay, J.—Heard the parties.

2. Originally, prayer of the petitioner in this writ application was to quash the order dated 30th August, 2006 taking cognisance for the offence under Sections 307, 323, 504/34 of the Indian Penal Code and Sections 3/4 of the Explosive Substance Act and also to quash the order dated 14.09.2006 passed by the 2nd Additional Sessions Judge, Pakur in S.C. No. 168 of 2006 which arise out of the same case and in which, charges were framed against the petitioner under Sections 307, 323, 504/34 of the Indian Penal Code and Section 3 of the Explosive Substance Act.

3. But at the outset, Mr. Pandey, learned Senior Counsel appearing for the petitioner stated that he is confining his prayer for quashing only the order framing charge dated 14.09.2006 for the offence u/s 3 of the Explosive Substance Act and he does not press his prayer so far as the quashing of the order taking cognisance is concerned.

4. The facts in short are that an F.I.R. being Pakur (M) P.S. Case No. 96 of 2006 was registered by the Police on the Fard Bayan of one Jaigam Bibi on 07.05.2006 against 12 named accused persons including the petitioner, wherein, it was alleged that one Falik Sheikh constructed a house illegally on a Government land. Said Fatik Sheikh also closed the ingrace and outgrace of the informant and his

family members which was being used as Rasta by creating a boundary wall. For the said dispute, a Panchayati was held wherein it was decided that at least 6 Ft. Government land should be left for public Rasta but the said decision of the Panchayat was not followed by Fatik Sheikh and others and when it was protested, the petitioner started abusing the husband of the informant. Thereafter, on the orders of petitioner, the accused persons started hurling bombs due to which the husband of the informant received injuries.

On the basis of the said Fard Bayan, the F.I.R. was registered under Sections 307, 323, 504/34 of the Indian Penal Code and Sections 3/4 of the Explosive Substances Act.

5. After the cognisance was taken, the case was committed to the Court of Sessions and then, by order dated 14.09.2006, the charge was framed by the Trial Court i.e. the learned Second Additional Sessions Judge, for the aforesaid offences.

6. Mr. Pandey, learned Senior counsel appearing for the petitioner submitted that framing of charge for the offence u/s 3 of the Explosive Substance Act is wholly illegal and without jurisdiction in view of the bar envisaged u/s 7 of the Explosive Substance Act which envisages that no Court shall proceed to the Trial of any person for an offence under this Act except with the consent of the District Magistrate. He submitted that till the date on which the charge was framed i.e. on 14.09.2006, the District Magistrate had not given consent or sanction to proceed with the trial there on the record and therefore, the Trial Court has acted beyond its jurisdiction in framing charge under the Explosive Substance Act and therefore, the order framing charge for the offence u/s 3 of the Explosive Substance Act against the petitioner and other accused persons was without jurisdiction.

7. It is further submitted that subsequently, the District Magistrate accorded sanction/consent on 23.03.2004 as stated in the counter affidavit as well as in Annexure-A to the counter Affidavit.

It is submitted on behalf of the petitioner that according sanction on 23.03.2007 by the District Magistrate after framing of charge or giving consent to proceed with the trial after framing of charge, is of no value. As a matter of fact, the sanction or the consent ought to have been accorded before framing of charge because the language of Section 7 of the Explosive Substance Act is clear that "No Trial can proceed unless consent is accorded by the District Magistrate. It is submitted that it is a settled law that the trial of an offence triable by the Court of Sessions starts from the date the charge is framed.

8. Challenging the sanction/consent accorded by the District Magistrate, it is also submitted on behalf of the petitioner that the same suffers from non application of mind. It is submitted that even from the sanction order, it would appear that the same was accorded mechanically without application of mind and that also in a printed form and therefore, such consent/sanction is illegal/invalid in law.

In support of his submission, Mr. Pandey, learned Senior counsel, relied on a decision in the case of Raj Kishore Prasad Vs. State of Bihar and another, .

9. Mr. Shamim Akhtar, learned S.C.-II appearing on behalf of the State submitted that there is no dispute of the fact that the sanction/consent was accorded by the District Magistrate on 23.03.2007 as contained in Annexure-A to the counter affidavit and prior to that days, the charge has already been framed. But, according to him, since after framing of charge the consent/sanction had already been accorded by the District Magistrate and therefore, the defect, if any, in framing charge got cured. Framing of charge without sanction/consent of the District Magistrate was mere irregularity and the said irregularity got cured after the District Magistrate accorded consent/sanction. He further submitted that from Annexure-A to the counter affidavit i.e. the order according sanction/consent it would appear that the District Magistrate, after examining the materials on record, came to the finding that prima-facie the case u/s 3/4 of the Explosive Substance Act was made out and then on being satisfied with the materials on record, he accorded sanction for prosecution of the accused persons. Therefore, only because those facts were stated in the printed form, it cannot mean the District Magistrate, in a mechanical manner or without application of mind, has accorded sanction for prosecution.

In support of his submissions, Mr. Shamim Akhtar, learned S.C.-II has relied on the decisions in the case of Jagat Narayan Upadhaya v. The State of Bihar reported in 1993 (1) PLJR 235. He has further relied in the case of Basudeo Kasera v. The State of Jharkhand reported in 2003 (2) JLJR 15 and in the case of Kapil Rajwanshi v. State of Bihar reported in (2003) 1 Eastern Criminal Cases 595.

10. Section 7 of the Explosive Substance Act reads as under:

7. Restriction on trial of offences: No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the District Magistrate.

From a plain reading of the aforesaid Section, it is clear that the Trial of a case against the accused against whom allegations are for commission of offence under the said Act, the same cannot proceed unless the District Magistrate accords consent/sanction as envisaged u/s 7 of the Explosive Substance Act.

The word used in the aforesaid Section is "Shall" and therefore, there is a complete restriction on the trial of the offence without the consent or sanction by the District Magistrate.

11. Now we have to examine as to from which stage of the case, it can be said that the Trial of the case has commenced. Chapted XVIII of the Code of Criminal Procedure deals with the "Trial before the Court of Sessions". Section 225 of the Cr.P.C. deals with the Trial to be conducted by the Public Prosecutor. This Section says that when the accused appears or is brought before the Court in pursuance

of a commitment of the case u/s 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

Section 226 envisages about the Discharge, which says that if upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Court considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so.

Section 228 speaks about Framing of charge. It says that if after consideration and hearing as u/s 227, the Court is of the opinion that there is ground for presuming that the accused has committed an offence, then he shall frame charge.

12. The decision in the case of Raj Kishore Prasad v. State of Bihar and Ors. (Supra), cited by the petitioner, speaks that the trial begins with Section 225 when the Public Prosecutor is present before the Court of Sessions to conduct the prosecution and opens its case disclosing the evidence by which he proposes to prove the guilt of the accused. The stage of Sections 227 and 228 comes as the next stage after observance of such procedure as a part of trial. The proceeding of discharge or charge the accused are all part of the trial.

13. In view of the decision of the Supreme Court of India, in the case of Raj Kishore Prasad v. State of Bihar and Ors. (Supra) as notice above, it has to be held that the Sessions Trial begins from the stage of Section 225 of Cr.P.C. when the Public Prosecutor opens its case disclosing the evidence by which he proposes to prove the guilt of the accused.

The framing of charge u/s 228 of Cr.P.C. comes after Section 225 Cr.P.C. and coming to the facts of the present case, there is no dispute or any doubt that on the date i.e. the date on which the charge was framed on 14.09.2006, the trial had already commenced and admittedly, on that date, the District Magistrate had not allowed the sanction/consent to proceed with the trial as envisaged u/s 7 of the Explosive Substance Act. Therefore, the framing of charge for the offence u/s 3 of the Explosive Substance Act has to be held to be illegal and invalid and therefore, the charge of the said offence u/s 7 of the Explosive Substance Act is hereby quashed.

14. So far as the question of non application of mind in granting sanction/consent by the District Magistrate is concerned, it appears that in the said order of sanction/consent, which has been annexed in the counter affidavit, it appears that it is mentioned therein that the District Magistrate, after perusing the materials on record, found it sufficient to make out prima-facie case under the Explosive Substance Act against the accused person and then, on being satisfied on the materials on record, he accorded consent/sanction. Only because the aforesaid facts are mentioned in printed form, it cannot be inferred that the District Magistrate has not applied his mind before according consent/sanction.

Therefore, I am not inclined to accept the contention of the petitioner that the sanction order suffers from non application of mind.

15. The next question would be as to what is the consequence of sanction which was accorded on 23.03.2007 by the District Magistrate subsequent to framing of charge.

Admittedly, sanction u/s 7 of the Explosive Substance Act was accorded on 23.03.2007. Therefore, now the Trial Court can proceed with the trial for the offence u/s 7 of the Explosive Substance Act only if it frame a fresh charge. It is the settled law that the charge can be altered, amended or added at any stage of the trial.

In the present case, there is no dispute of the fact that the prosecution has not started leading his evidence as yet.

16. Now the Trial Court is directed to proceed with the trial for the offences under Sections 307, 323, 504/34 of the Indian Penal Code. However, if on the facts and circumstances of the case, it chooses to proceed with the trial for the offence u/s 3 of the Explosive Substance Act also against the accused then he has to frame a fresh charge for the said offence u/s 3 of the Explosive Substance Act against the accused persons and then he may be at liberty to proceed with the trial for the said offence.

With the aforesaid observations and directions, this writ petition stands disposed of.