
(2010) 07 PAT CK 0067
In the Patna High Court

Anandi Mahto and Others

APPELLANT

Vs

The State of Bihar and Nagendra Mahto

RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 311, 319, 482

Penal Code, 1860 (IPC) — Section 313, 323, 34, 341, 342

Citation : (2010) 07 PAT CK 0067

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Twelve petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 2.9.1999 passed by learned District and Sessions Judge, Samastipur in Cr. Revision No. 363 of 1999. By the said order, the learned Sessions Judge has quashed the order dated 24.5.1999 passed by Sri K.S. Singh "Sanger", Judicial Magistrate, Ist Class, Rosera in T.R. No. 29 of 1999 arising out of Hasanpur P.S. Case No. 116 of 1992. The learned Magistrate, by its order dated 24.5.1999, had rejected the petition filed by the prosecution for addition of charges u/s 411 of the Indian Penal Code and Section 27 of the Arms Act.

2. Short fact of the case is that for an occurrence, which had taken place on 10.8.1992, on the basis of written report of one Sonelal Mahto, who has been arrayed as opposite party No. 2, an F.I.R. was registered on 18.8.1992 for the offence under Sections 342, 323, 379, 411/34 of the Indian Penal Code. However, after thorough investigation, charge sheet was submitted under Sections 341, 342, 504 and 379 of the Indian Penal Code. F.I.R. was lodged against altogether 13 accused persons, which include the petitioners. After conclusion of the investigation, police submitted charge sheet only against three accused persons. Thereafter, charges were framed against three accused persons

for offence under Sections 341, 342, 323, 379 and 504 of the Indian Penal Code. After framing of the charge, trial commenced and altogether seven witnesses were examined during the trial and thereafter, a petition was filed u/s 319 of the Code of Criminal Procedure for summoning other accused persons, who were not forwarded by the police to face trial along with the accused persons, who were put on trial. The petition was allowed and thereafter, the trial commenced de novo. From the orders, which have been brought on record, it appears that after other accused persons were summoned and added to face trial, evidence of all the seven witnesses, who were earlier examined, was expunged and the court started to take evidence of the witnesses afresh. After examination of about six witnesses, prosecution evidence was closed on 11.4.1998. Thereafter, a petition was filed u/s 311 of the Code of Criminal Procedure, which was also rejected and subsequently, a Criminal Revision against the said order was preferred, which was allowed and after examining additional witnesses, evidence of the prosecution case was closed on 22.3.1999. On 17.4.1999, the learned trial court heard the argument of the defence and thereafter, the case was fixed on four dates for further argument, but without any progress. On 14.5.1999, an application was filed for addition of charges u/s 27 of the Arms Act and Section 411 of the Indian Penal Code. The trial court, after examining the entire materials and evidence on record, came to the conclusion that there were no sufficient materials for adding charge as prayed by the prosecution. On the contrary, the learned trial court was of the opinion that prosecution only with a view to delay the conclusion of the trial, had filed said petition and by its order dated 24.5.1999, the learned trial court rejected the petition of the prosecution and fixed the case for further argument.

3. Aggrieved with the order dated 24.5.1999, the prosecution filed a Criminal Revision vide Cr. Revision No. 363 of 1999. It may be recorded that the prosecution, while filing the revision, completely failed to appreciate that in the present case, occurrence had taken place long back in the month of August, 1992 and in this case, twice prosecution witnesses were examined.

4. After filing of the revision petition, the revisional court admitted the said Criminal Revision on 24.6.1999 and stayed the proceeding before the court below and finally by order dated 2.9.1999 allowed the revision preferred by the prosecution.

5. Aggrieved with the order dated 2.9.1999 passed by the District and Sessions Judge, Samastipur in Criminal Revision No. 363 of 1999, the petitioners preferred the present petition, which was finally admitted on 28.3.2001 and while admitting, this Court directed that till disposal of this case, further proceeding in G.R. No. 442 of 1992/T.R. No. 29 of 1999 pending in the court of Sri K.S. Singh "Sanger", Judicial Magistrate, Ist Class, Rosera shall remain stayed and order of stay is continuing.

6. While challenging the impugned order, learned Counsel for the petitioners Dr. Amrendra Kumar, argued that the revisional court, while allowing the revision

petition, completely failed to appreciate that after such a long time, there was no requirement to allow petition for amending charge u/s 411 of the Indian Penal Code and Section 27 of the Arms Act. It was further submitted that right from the very beginning, the prosecution by hook and crook wanted to add the aforesaid sections for prosecuting the petitioners, but always they failed. He submits that immediately after lodging the F.I.R., the Investigating Officer wanted to add said provisions in the F.I.R. However, after investigation, the Investigating Officer was also satisfied that no offence u/s 411 of the Indian Penal Code and Section 27 of the Arms Act was made out and thereafter, charge sheet was not submitted under those sections. At the stage of charge also, the learned Magistrate was satisfied that no offence u/s 411 of the Indian Penal Code and Section 27 of the Arms Act was made out and, accordingly, charges were not framed for such offences. It was submitted that on the basis of framing of first charge, trial in the present case had commenced and almost when it was at the fag end a petition was filed for adding other persons as accused, which was allowed and subsequently, the evidence of altogether seven witnesses, which were already brought on record, were expunged and de novo trial commenced. Again at the second stage of framing of the charges, charges u/s 411 of the Indian Penal Code and Section 27 of the Arms Act was not framed and trial commenced, prosecution evidence was closed, statement of accused u/s 313 of the Indian Penal Code was recorded and even argument had already started, but due to the reasons best known to the prosecution after getting adjournment on four dates at a belated stage, again a petition was filed on 14.5.1999 for addition of charge u/s 411 of the Indian Penal Code and Section 27 of the Arms Act. It was submitted that the learned trial court had dealt with the matter in detail. He had examined the evidence brought on record and thereafter, the trial court was satisfied that the petition was filed by the prosecution only with a view to delay the conclusion of the trial and thereafter, the petition was rejected.

7. While referring to the impugned order, i.e. order dated 2.9.1999 passed in Cr. Revision No. 363 of 1999, learned Counsel for the petitioners submits that the learned Sessions Judge, while hearing a Criminal Revision petition, had proceeded as if he was hearing an appeal. It was submitted that beyond the scope of exercising revisional jurisdiction, the learned Sessions Judge started to examine entire evidence and virtually he has recorded the finding, which was required to be recorded by the trial court. It was further submitted that the revisional court was required to examine purely question of law or legality or illegality in order passed by the trial court, but in the present case, he acted as if he was a trial judge. Finally, it was submitted that in any event after lapse of more than 18 years from the date of occurrence, it would not be appropriate for this Court to direct the petitioners to again participate in a de novo trial. It was submitted that if according to the order of the revisional court, charges are added or amended, the witnesses, who had already been examined, will be required to be further examined/cross examined and it will again take further considerable time in conclusion of the trial. It was submitted that in that event,

the right of speedy trial of the petitioners will be infringed and, accordingly, it has been prayed to quash the impugned order. It was further submitted that the informant, on whose written report, the prosecution had commenced, had subsequently turned hostile and he wanted not to proceed with the present case.

8. Smt. Indu Bala Pandey, learned Additional Public Prosecutor appears on behalf of the State and she has opposed the prayer of the petitioners.

9. In this case, none has appeared on behalf of the opposite party Nos. 2 and 3.

10. Besides hearing learned Counsel for the petitioners and State, I have also perused the materials available on record particularly two orders i.e. order dated 24.5.1999 passed by Sri K.S. Singh, "Sanger", Judicial Magistrate, Ist Class, Rosera as well as the impugned order i.e. order dated 2.9.1999 passed by the District and Sessions Judge, Samastipur in Cr. Revision No. 363 of 1999. The perusal of both the orders makes it clear that in the present proceeding twice, charges were framed and twice number of witnesses were examined and as such the learned revisional court was not required to interfere with the order of the trial court. The trial court was of the opinion that petition for adding charge was filed only with an object to delay the conclusion of the trial. This Court is also satisfied that the petition for adding the charges was un-warranted. It is true that charges can be added even before signing of the judgment, but in peculiar facts and circumstances of the present case, it was not at all justified for the learned Sessions Judge to pass an order for addition of the charges. The learned Sessions Judge was oblivious of the fact that in this case, occurrence had taken place long back in the year 1992 and in this case, the evidence of seven witnesses, who were examined after framing of the first charge, were expunged and subsequently, number of witnesses were examined and case was fixed for argument and argument had already commenced. In such a situation, it was not required to interfere with the order of the trial court.

11. Accordingly, for the ends of justice, it is necessary to interfere with the revisional order and as such order passed in Cr. Revision No. 363 of 1999 by the District and Sessions Judge, Samastipur is hereby set aside. After setting aside the order of the revisional court, it is necessary to direct the defence and prosecution to take steps for concluding their argument as early as possible. The trial court is directed to take steps so that the trial may be disposed of within a period of three months from the date of receipt/production of a copy of this order.

Keeping in view the fact that this is an old case, it is desirable to direct the trial court to hear the argument in the present case at least thrice in a week.

12. With above observation and direction, the petition stands allowed.