

(2001) 02 PAT CK 0091

In the Patna High Court

Case No : Criminal Miscellaneous No. 28391 of 1999

Ashok Kumar Mishra

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 13-02-2001

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 182, 211, 307, 34, 379

Citation : (2001) 2 PLJR 396 : (2001) 3 RCR(Civil) 460

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Advocate : Ambrish Kr. Jha, for the Appellant; Ibrahim Kabir , Assistant Public Prosecutor for State, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—Heard learned counsel for the parties. Invoking jurisdiction of this Court u/s 482 of the Code of Criminal Procedure the petitioner has not only challenged the revisional order dated 14.7.99 but also the order taking cognizance dated 26.8.1999 passed by the learned Chief Judicial Magistrate, Darbhanga.

2. The facts of the case lie in narrow compass. In a case registered under Sections 379, 307 and 34 of the Indian Penal Code read with Section 27 of the Arms Act, the police after investigation submitted final form stating "mistakes of facts". Moreover, the Investigating Officer prayed before the learned Chief Judicial Magistrate, to take action against the informant- Opposite Party u/s 182 and 211 of the Penal Code. The learned Chief Judicial-Magistrate accepting the final report, on 28.11.1998 issued show cause notice to the informant-Opposite Party. The said order was impugned before the Revisional Court in Cr. Revision No. 410/98.

3. Admittedly in the Revision application the petitioner was arrayed as Opposite

Party along with formal party i.e. State of Bihar. However, the Revisional court set aside the order of the learned Chief Judicial Magistrate dated 28.11.1998 without even issuing any notice to the petitioner. By his order the Revisional court also set aside the order of the learned Chief Judicial Magistrate accepting final form and also issuing notice to Opposite Party no. 2 u/s 182 and 211 of the Penal Code. The Revisional court remitted the matter to the learned Chief Judicial Magistrate for passing necessary order in the light or observations made by it.

4. On the basis of observations and direction made by the Revisional Court the learned Chief Judicial Magistrate by impugned order dated 26.8.1999 took cognizance of offence and issued process against the petitioner. The petitioner thus being aggrieved moved this Court.

5. Learned counsel for the petitioner has urged that as because the petitioner was not noticed, he had no idea about the order passed by the Revisional Court and till process was issued he had no information that the order dated 28.11.1998 accepting the final form has been set aside by any higher forum. According to him, as soon as the petitioner came to know about this development he has rushed to this Court. Learned counsel for the Opposite party no. 2 on the other hand, submits that as because earlier order of the learned Chief Judicial Magistrate accepting the final form was bad in law, therefore, the Revisional Court has rightly set aside the said order. However, with all fairness learned counsel submits that the Revisional court before disposing of the Revision application ought to have given notice to the petitioner.

6. In this background, in my view, the order of the revisional court passed ex parte cannot be sustained in law because the Revisional Court failed to exercise its judicial duty by not giving any notice to the Opposite Party no. 2. The order dated 28.11.1998 was admittedly in favour of the petitioner against which the Opposite Party no 2 moved in Revision. Thus, when the Revisional court set aside the order, opportunity ought to have been given to the petitioner of being heard. That having not done, in my view, the said revisional order cannot be sustained in law. This application is, accordingly, allowed. The order of the Revisional court dated 14.7.1999 is set aside and the matter is remitted to it for fresh disposal after hearing both the parties, namely, the petitioner as well as Opposite Party no. 2. As I have set aside the order of the Revisional Court, the subsequent order of the learned Chief Judicial Magistrate also cannot be sustained. Thus, the order of the learned Chief Judicial Magistrate dated 26.8.1999 is also set aside. The Revisional court is directed to dispose of the matter as expeditiously as possible and preverably within six weeks from the date of receipt/production of a copy of this order.