
(2010) 10 PAT CK 0032

In the Patna High Court

Case No : Criminal Miscellaneous No. 10672 of 2007

Atiqure Rahhman

APPELLANT

Vs

State of Bihar and Md. Kyamuddin

RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2011) 59 BLJR 208

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The sole Petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 21.11.2006 passed by the learned Chief Judicial Magistrate, Motihari . By the said order, learned Chief Judicial Magistrate, Motihari was prima facie satisfied that offence u/s 302/34 of the Indian Penal Code and 27 of the Arms Act was made out in Mehasi P.S. Case No. 51 of 2005 and directed for issuance of processes against the Petitioner and one Abdul Haque @ Hazi Abdul Haque Ansari.

2. At the very outset, learned Counsel for the Petitioner has submitted that in case of Abdul Haque @ Hazi Abdul Haque Ansari, this Court had quashed the order, whereby processes were directed to be issued against both the accused, i.e. Abdul Haque @ Hazi Abdul Haque Ansari and this Petitioner and the matter was remitted back to the learned Magistrate for passing a fresh order.

3. Short fact of the case is that initially an F.I.R. vide Mehasi P.S. Case No. 51 of 2005 was registered for offence u/s 302/34 of the Indian Penal Code and 27 of the Arms Act against eight accused persons including this Petitioner. After investigation, initially the police submitted charge sheet against six accused

persons and investigation in respect of this Petitioner and another accused Hazi Abdul Haque Ansari was kept pending. After submission of charge sheet against six accused persons, learned Magistrate took cognizance of offence on 31.10.2005 and at subsequent stage the case was committed to the court of Session. After the case was committed to the court of Session, the police submitted supplementary case diary and the police exonerated this Petitioner as well as one another accused, namely, Abdul Haque @ Hazi Abdul Haque Ansari. Learned Magistrate differing with the police report vide its order dated 21.11.2006 directed for issuance of processes against the Petitioner and co-accused Abdul Haque @ Hazi Abdul Haque Ansari. It has been submitted by Sri Subodh Kumar, learned Counsel for the Petitioner that the learned Magistrate, while differing with the final report had not assigned any reason for issuance of process against the Petitioner and one another accused person. Learned Counsel for the Petitioner during the course of argument has produced certified copy of the judgment dated 24th October, 2008 passed in Cr. Misc. No. 13315 of 2007(Keep it on record). It has been submitted that co-accused Abdul Haque @ Hazi Abdul Haque Ansari, against the order of cognizance had filed a revision petition which was rejected by the learned Sessions Judge, East Champaran at Motihari. Thereafter, he filed a quashing application before this Court vide Cr. Misc. No. 13315 of 2007. This Court has allowed the petition of co-accused Abdul Haque @ Hazi Abdul Haque Ansari and remitted back the matter to the learned Chief Judicial Magistrate, East Champaran at Motihari to give a fresh finding on consideration of the final report and supplementary case diary. Learned Counsel for the Petitioner has further submitted that other six accused persons against whom earlier charge sheet was submitted have finally been acquitted by the learned trial court.

4. I have also heard Sri Raj Ballabh Singh, learned Addl. Public Prosecutor appearing on behalf of the State.

5. Besides hearing learned Counsel for the Petitioner as well as the State, I have also perused the materials available on record as well as certified copy of the judgment dated 24th October, 2008 passed in Cr. Misc. No. 13315 of 2007. Keeping in view the fact that in the case of other co-accused in similar circumstances in the case, this Court has remitted back the matter to the court of learned Chief Judicial Magistrate, East Champaran at Motihari for passing a fresh order after considering the final report and supplementary case diary, there is no reason to deviate. Accordingly, in the similar circumstances, the order dated 21.11.2006 passed in Mehasi P.S. Case No. 51 of 2005 by the learned Chief Judicial Magistrate, East Champaran at Motihari so far as Petitioner is concerned, is hereby set aside and the case is remitted back to the learned Chief Judicial Magistrate, East Champaran at Motihari to give a fresh finding on consideration of the final report and supplementary case diary.

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