

(2009) 02 PAT CK 0056

In the Patna High Court

Case No : Criminal Miscellaneous No. 5353 of 2009

Chhtu @ Chhotu Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 307

Citation : (2009) 57 BLJR 1182 : (2009) 4 PLJR 845

Hon'ble Judges : Dharnidhar Jha, J

Bench : Single Bench

Advocate : Kamaldeo Sharma, for the Appellant; Dashrath Mehta, APP, for the Respondent

Judgement

Dharnidhar Jha, J.—Heard.

2. The case is u/s 307 and other different Sections of the Indian Penal Code and Section 27 of the Arms Act. As may appear from the two earlier rejection orders passed by me in Cr. Misc. Nos. 20635 of 2007 and 8404 of 2008, the petitioner had fired a shot which hit the informant into his belly and the injury was reported to be grievous. Considering the seriousness of the allegation and the act the prayer for bail was rejected twice as may appears from the above noted orders.

3. While passing the last order, Annexure-2, a direction was issued to the trial court to conclude the trial in nine months after examining the witnesses. The trial court could not attain the timeframe fixed by this Court and was approached twice for bail on 28.11.2008 and 19.1.2009 and the learned trial Judge who hears Sessions Trial No. 188 of 2007 while passing the order on 28.11.2008 refused releasing the petitioner because by that time the learned Judge was of the opinion that the timeframe fixed by this Court had not come to an end. While passing the order on 19.1.2009, the learned Judge did not say that the timeframe had not exhausted, rather, lamented the non-production of the witnesses so much so that even the summonses which were issued by him

against the witnesses were not returned served or unserved. As regards the warrant of arrest issued on 17.5.2008, the learned Judge has reported that the police has not taken any interest in production of the witnesses after executing them.

4. If one could peruse the relevant Chapter of Civil Court Rules/Criminal Court Rules framed by this Court for conducting business by the lower court, one could find that as soon as a Judge or the court issues summons and sends it to the process server's establishment, the entire establishment becomes automatically sub-ordinate to such court or officer. Lamenting a situation could be no escape for a Judge. The learned Judge could not point out that he had sought any report from the Nazir or the Judge-in-charge as to why for the summonses issued by him remained lying in the process server's establishment under the Nazir and were not executed. He could have pointed out this fact to the Sessions Judge and on being pointed out, the Court believes, he must not have slept over the matter. I am interested in knowing from the Sessions Judge, Muzaffarpur, as to when the summonses against the witnesses were received in the process server's establishment of the Civil Court, Muzaffarpur, in respect of Sessions Trial No. 188 of 2007 and why those summonses were not served. The learned Judge could inform me as to who were the persons responsible for keeping the summonses lying in the Nazarat and what steps he proposes to take against all responsible officers/employees for such serious lapse.

5. As regards the non-execution of the warrant of arrest, the learned Judge appears issuing the same on 17.5.2008, seven months back when he was passing the order on 19.1.2009. He does not indicate in his order that he is sued any notice to show cause upon the Officer-in-charge of Kazi Mohamadpur Police Station as to why warrants of arrest were not executed and witnesses not produced. A Judge has to forge and develop his own tools for getting the witnesses produced before him and to take the trial to its logical conclusion. The higher Court is exercising its jurisdiction under the power vested in it under some Statute. It is not supposed to run the lower courts. They are supposed to run by the Officers who man them. Refusing to release an accused and lamenting a situation as has been done in the present case, may not be helpful under the situation being made out by the lower court. It may be an example of an exemplary inefficiency if the officer is not showing efficiency or is not taking pains only because he has reached the highest in his career. He must not miss out that his career would not be of any value for a court of law, if the officer is not helping out the cause of the case being disposed of.

6. I direct the learned Sessions Judge, Muzaffarpur, to immediately remit a report on the matter as indicated above so that the petition could be listed before me for directing appropriate actions to be initiated.

7. A copy of the present order shall be communicated to the Superintendent of Police, Muzaffarpur, for holding an enquiry on non-execution of the warrant of arrest issued against the P.Ws. against the officers of Kazi Mohamadpur Police

Station including the Officer-in-charge of the Police Station, and he shall be making a separate report to this Court as to what action he proposes to take against the erring officers.

8. As regards the prayer for bail, let the petitioner Chhotu alias Chhotu Singh be released on his furnishing a bond of Rs. 3,000/- (three thousand) with two sureties of the like amount each to the satisfaction of the 5th Additional Sessions Judge, Muzaffarpur, in Sessions Trial No. 188 of 2007 arising out of Kazi Mohamadpur P.S. Case Mo 146 of 2006.