

(2011) 02 PAT CK 0050

In the Patna High Court

Case No : Criminal Miscellaneous No. 1761 OF 2001

Gyandeo Sharma

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

Citation : (2011) 02 PAT CK 0050

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 21.12.2006, passed by the learned Chief Judicial Magistrate, Patna in G.R. No. 980 of 1999/ Tr. No. 82 of 1996, whereby it was ordered to frame charge u/s 147 of the Indian Penal Code. The Petitioner has also prayed for quashing of the order dated 27.11.2000 passed by the learned Chief Judicial Magistrate, whereby the petition filed on behalf of the Petitioner u/s 300(1) of the Code of Criminal Procedure was rejected.

2. Short fact of the case is that on 10.3.1990, three F.I. Rs were lodged in Shri Krishna Puri Police Station almost in a connected occurrence. The first case i.e. S.K. Puri P.S. Case No. 31 of 1990 was registered for the offences under Sections 146, 148, 149, 323, 307, 336, 353 of the Indian Penal Code, Section 27 of the Arms Act and Sections 3 and 5 of the Damage to Public Property Act against Satya Narayan Mishra and 10 others including the Petitioner and 20-25 unknown persons. On the same day, the second F.I.R. vide S.K. Puri P.S. Case No. 32 of 1990 was registered against Satya Narayan Mishra, in which the Petitioner was the informant and in third case i.e. S.K. Puri P.S. Case No. 33 of 1990, the Petitioner was made accused and Satya Narayan Mishra was the informant.

3. The present case is in relation to S.K. Puri P.S. Case No. 31 of 1999, in which 11 persons were named in the F.I.R. along with 20-25 unknown persons. The said F.I.R. was lodged on the self-statement of the Officer Incharge of Shri Krishna Police Station, wherein it was disclosed by the informant that on the

same day i.e. on 10.3.1999 at 9.00 P.M. he heard a rumour that there was tension in between the parties over a disputed land and both the parties variously armed with fire-arms had assembled there and there was apprehension of causing blood-shed. After getting the said information, the informant i.e. the Officer Incharge of Shri Krishna Puri Police Station along with police force proceeded to the place of occurrence through Police Mobile No. BPZ 8973. As he proceeded towards the place of occurrence i.e. Plot No. 901, Khata No. 50, situated adjacent to the north of Tapasya Market, over which there was already a proceeding u/s 144 of the Code of Criminal Procedure between the Petitioner and one Satya Narayan Mishra, the informant noticed that both the parties along with their men variously armed with fire arms had assembled and were throwing brick bats upon each other. On chase, the police apprehended two persons armed with loaded rifle and gun and they disclosed their names and both the persons, who were apprehended, were men of Satya Narayan Mishra . The police also apprehended Satya Nartayan Mishra in injured condition at the place of occurrence. The Petitioner was also apprehended. However, the men of the Petitioner fled away. It was disclosed by the informant that while the apprehended persons including the Petitioner were being carried by the police in the police Jeep, 25-30 rioters (associates of Satya Narayan Mishra) again assembled there and started pelting stones and brick-bats on the Police Jeep, wherein the glass of the Jeep was broken and the driver of the said Jeep received serious injuries, whereby he became unconscious. All the rioters were challenging for releasing the accused Satya Narayan Mishra. In the meanwhile, Special Mobile and Mobile of Budha Colony arrived there and with the help of other Force, the police party could arrested some of the accused persons and also seized one motorcycle of the accused, which was left by the accused persons, while fleeing away. On the basis of the self-statement of the Officer In charge of Shri Krishnapuri Police Station an F.I.R. vide S.K. Puri P.S. Case No. 31 of 1990 was registered and the police, thereafter, investigated the case. Similarly, on the basis of fardbeyan of the Petitioner one another F.I.R. vide Shastri Nagar P.S. Case No. 32 of 1990 was registered against Satya Narayan Mishra and others and third F.I.R. was lodged on the basis of the fardbeyan of Satya Narayan Mishra against the Petitioner and others.

4. In S.K. Puri P.S. Case No. 31 of 1999, after investigation Chargesheet was submitted against all the eleven accused persons including the Petitioner for the offences under Sections 147, 148, 149, 307, 323/426 of the Indian Penal Code. After the order of cognizance and supply of police papers, the case was committed to the Court of Session. However, at the stage of charge, the learned 11th Addl. Sessions Judge, Patna considered that no case u/s 307 of the Indian Penal Code was made out and, as such, the learned Addl. Sessions Judge remitted back the matter to the court of Magistrate for trial . At the stage of charge, a discharge petition was filed on behalf of the Petitioner, which was rejected on 4.8.2005 by the learned Chief Judicial Magistrate, Patna.

5. The Petitioner aggrieved with the rejection of discharge petition approached

this Court by filing a quashing application vide Cr. Misc. No. 12954 of 1995 and a Bench of this Court vide its order dated 31.10.1995 (Annexure-6) quashed the order of rejection of discharge petition passed by the learned Chief Judicial Magistrate and remitted back the matter to the learned Magistrate with a direction to pass afresh order in accordance with law after giving opportunity of hearing to the Petitioner. Accordingly, the quashing application was allowed. After the case was remitted back to the learned Magistrate, the Petitioner filed a detailed discharge petition. However, by the impugned order i.e. the order dated 21.12.1996 again rejected the discharge petition and direct for framing of the charge u/s 147 of the Indian Penal Code.

6. The Petitioner while pressing the discharge petition before the learned Chief Judicial Magistrate had argued that in relation to the same occurrence, the Petitioner was also made accused in S.K. Puri P.S. Case No. 33 of 1990 , which was registered for offences under Sections 147, 323, 337, 338, 426 of the Indian Penal Code. In that case the police had submitted chargesheet u/s 307 and other allied Sections of the Indian Penal Code and after cognizance and completion of processes u/s 207 of the Code of Criminal Procedure the case was committed to the court of Session and the Petitioner was put on trial vide Sessions Trial No. 442 of 1999 and the Petitioner after full-fledged trial was acquitted from all the charges. Since the learned trial Judge was of the opinion that the Petitioner had purchased the suit land and it was proved that he had only resisted the attempt of the informant (Satya Narayan Mishra) to forcibly occupy the land in the right of his private defence of his property and the learned trial Judge also found that the force used was not excessive keeping in view the evidence on record relating to the injuries , which were itself doubtful and finally by judgment dated 25.1.1992 the Petitioner got a clean acquittal. Accordingly, it was prayed on behalf of the Petitioner that for the same offence, the Petitioner may not be put on second trial. However, the learned Chief Judicial Magistrate by its order dated 21.12.1996 again rejected the petition for discharge. Even after rejection of discharge petition in the year 1996, there was no progress in the trial and, thereafter, on behalf of the Petitioner one another petition was filed in the court of learned Chief Judicial Magistrate, in view of Section 221(2) and Section 300(1) of the Code of Criminal Procedure for discharging the Petitioner on the ground that for the same offence the Petitioner was put on trial and, thereafter he got an order of acquittal. However, the learned Chief Judicial Magistrate vide its order dated 27.11.2000 rejected the said petition merely on the ground that the learned Magistrate was not having jurisdiction to review or recall its earlier order keeping in view the fact that the Petitioner's discharge petition was already rejected finally by his order dated 21.12.1996.

7. Aggrieved with the order dated 27.11.2000 as well as the order dated 21.11.1996 passed by the learned Chief Judicial Magistrate, the Petitioner approached this Court by filing the present petition, which was admitted for hearing on 20.11.2001. While admitting, it was directed that during the pendency of this application further proceeding in G.R. Case No. 980 of 1990/ T/

R. No. 82 of 1996, pending in the court of Chief Judicial Magistrate, Patna, shall remain stayed. The order of stay is still continuing.

8. Sri Ajay Kumar Thakur, learned Counsel for the Petitioner, while challenging both the orders submits that the learned Chief Judicial Magistrate in its order dated 21.12.1996 has grossly erred in observing that the Petitioner was not earlier charged or tried for the offence u/s 147 of the Indian Penal Code . It was submitted by Sri Thakur, learned Counsel for the Petitioner that for the same occurrence, three F.I. Rs were lodged. Amongst them, one of the case was S.K. Puri P.S. Case No. 33 of 1990, in which the Petitioner was put on trial and finally, the Petitioner got a judgment of acquittal on 25th January,1992 in Sessions Trial No. 442 of 1990(S.K. Puri P.S. Case No. 33 of 1990) passed by the learned Second Addl. Sessions Judge, Patna. It was argued that in one occurrence if the Petitioner was already put on trial and finally got order of acquittal, there was no ground for the learned Chief Judicial Magistrate for rejecting the petition filed on behalf of the Petitioner u/s 300(1) of the Code of Criminal Procedure. Sri Thakur, learned Counsel for the Petitioner has emphasized that the provision u/s 300(1) of the Code of Criminal Procedure is mandatory, which says that once a person is tried by a court of competent jurisdiction for an offence and acquitted of such charge and, such, acquittal remains in force, he shall not be liable to be again tried for the same offence and for the same facts for any other offence. Sri Thakur, learned Counsel for the Petitioner has elaborately argued that offence in one occurrence permits only one prosecution and once the Petitioner was prosecuted for an occurrence in the same transaction at subsequent stage, he cannot be directed to face trial for any offence for the same transaction. In support of his arguments , learned Counsel for the Petitioner has heavily relied on Judgments reported in S.A. Venkataraman Vs. The Union of India (UOI) and Another, Surajpal Singh Vs. The State of Uttar Pradesh, and Jawala Ram Vs. State of Pepsu, . It was also submitted by Sri Thakur, learned Counsel for the Petitioner that after the judgment of acquittal dated 27.10.1990 passed by the learned Second Addl. Sessions Judge, Patna in Sessions Trial No. 442 of 1990, the informant of the case, namely, Satya Narayan Mishra had preferred a revision vide Cr. Revision No. 103 of 1992, which too stood dismissed by this Court on 17.7.1992 (Annexure-4). According to Sri Thakur, learned Counsel for the Petitioner acquittal of the Petitioner in Sessions Trial No. 442 of 1990 (S.K. Puri P.S. Case No. 33 of 1990) had attained its finality and thereafter no prosecution of the Petitioner for the same offence would be permissible and both the impugned orders as well as entire criminal proceeding so far as Petitioner is concerned, is liable to be set aside.

9. Smt. Indu Bala Pandey, learned Addl. Public Prosecutor, appearing on behalf of the State has strongly opposed the prayer of the Petitioner. It was submitted by Smt. Pandey, learned Addl. Public Prosecutor that it was a serious case, in which while the police after apprehending the accused persons including the Petitioner was carrying them on police Jeep, the Police party was attacked by the rioters that too for getting the apprehended accused persons released and as such,

keeping in view the seriousness of the offence, this Court may not interfere with either of the orders. It was further submitted that so far as the order dated 27.11.2000 passed by the learned Chief Judicial Magistrate is concerned, it was passed in accordance with the statutory provisions contained in the Code of Criminal Procedure. It was submitted that there is restriction for reviewing or recalling any order under the Code of Criminal Procedure and, as such, the learned Magistrate has rightly not passed an order for recalling the earlier order.

10. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. So far as argument advanced by Sri Thakur, learned Counsel for the Petitioner that for the same offence the Petitioner was put on trial and thereafter acquitted and, as such, he may not be put on trial so far as the second case is concerned, the Court is of the opinion that in view of the facts and circumstances of the present case, the said argument has got no force. In the present case, three F.I. Rs. for distinct offence were lodged. In S.K. Puri P.S. Case No. 32 of 1990, the Petitioner himself was the informant, in which Satya Narayan Mishra and others were made accused on an allegation that the accused persons being aggressors had assembled unlawfully and committed the offence. Similarly, in S.K. Puri P.S. Case No. 33 of 1990, the Petitioner was made accused on the basis of fardbeyan of Satya Narayan Mishra that the Petitioner and others had formed unlawful assembly and attacked the informant of that case. So far as the present case i.e. S.K. Puri P.S. Case No. 31 of 1990 is concerned, there is specific allegation that while the apprehended accused persons were being carried in the Police Jeep, the Police Party was attacked by the men of accused persons i.e. rioters and, as such, after examining the fact of three cases, the present case cannot be categorized as a case of same offence or committed in same transaction. The present occurrence was entirely different and distinct, in which police party was attacked by the accused persons. Accordingly, the plea of the Petitioner that he was already put on trial has got no relevance for just adjudication in the present case. However, after going through the facts and material of the present case, the Court is of the opinion that on merit the Petitioner deserves some relief from this Court. In the present case, i.e. S.K. Puri P.S. Case No. 31 of 1990, the informant/ Officer Incharge had made a categorical statement that while he approached the place of occurrence, accused persons, who were indulged in throwing stones and brick-bats on each other over a land over which proceeding u/s 144 of the Code of Criminal Procedure was going on, all the accused persons after noticing the police started fleeing away. However, some of the accused persons including the Petitioner were apprehended by the police and, thereafter, they were kept in the Police Jeep and were being carried to the Police Station. It was categorical stand of the Officer In charge that in the occurrence, all the men of the Petitioner had fled away and number of accused persons, who were arrested, were men of Satya Narayan Mishra and all were kept in the Jeep. Thereafter, 20-25 men of accused Satya Narayan Mishra started pelting stones on the police jeep challenging for release of Satya Narayan Mishra. This fact indicates that while the Petitioner was already

in custody, he had not indulged in any type of occurrence in relation to S.K. Puri P.S. Case No. 31 of 1990. On merit, the Court is of the opinion that involvement of the Petitioner was doubtful. Of course, while hearing a petition u/s 482 of the Code of Criminal Procedure, it is not desirable or permissible for this Court to record such opinion, but keeping in view the over all facts and circumstances, particularly the fact that in one case, the Petitioner was already tried and acquitted and the fact that in the present case alleged occurrence had taken place about 20 years back in the year 1990 , without any progress in the trial, it would not be appropriate for this Court to direct that the Petitioner to appear before the Court below for framing of the charge and face trial.

11. In view of the facts and circumstances of the present case, the Court is of the opinion that allowing the proceeding before the court below in S.K. Puri P.S. Case No. 31 of 1990 would amount to allowing abuse of the process of the Court and, as such, it is a fit case for interference with the impugned orders. Accordingly, both the orders i.e. order dated 21.12.1996 and order dated 27.11.2000 passed by the learned Chief Judicial Magistrate in G.R. Case No. 980 of 1990/ T.R. No. 82 of 1996 are hereby set aside so far as Petitioner is concerned and the petition stands allowed. 1