

(2010) 04 PAT CK 0021

In the Patna High Court

Case No : Criminal Miscellaneous No. 7298 of 2008

Jai Prakash Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 302, 307, 323, 324, 327

Citation : (2011) 2 PLJR 627

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Akhilesh Chandra, J.—Heard learned Counsel for the Petitioner, opposite parties No. 2 to 4 and the State.

2. This is an application for quashing the order dated 24.1.2008 passed by the learned Chief Judicial Magistrate, Saran at Chapra in Garkha P.S. Case No. 78 of. 2005 where under final form submitted by the Investigating Officer with respect to opposite party Nos. 2 to 4 was accepted.

3. It is admitted position that case was instituted at fardbayan of the Petitioner against altogether eleven persons including the Petitioner for the offences under Sections 341, 323, 324, 327, 307 and 302/34 of the Indian Penal Code as early as on 15.8.2005. After investigation, Police submitted charge-sheet in different phases. Earlier, after taking cognizance against each and every and submission of charge-sheet, case was committed to the court of sessions where trial with respect of such persons admittedly has already commenced.

4. It is also not disputed that before submission of first charge-sheet in this case protest petition was filed by the informant on 22.8.2005 but since charge-sheet was submitted subsequently it was not very much relevant but when, by concluding the investigation, the Police submitted final form against three

persons of the opposite parties. Its relevancy is apparent but as it appears from the impugned order of the court below did not take notice rather it is mentioned that there is no protest petition.

5. It is cardinal principle of law that cognizance is taken for the offences not against the accused persons whereas once in this case tribal by court of sessions cognizance was taken on submission of charge-sheet that order itself is operative against such subsequent outcomes of investigation. Normally at the first outcome of the investigation cognizance is taken entire case could have been committed irrespective of keeping the investigation pending against some of the accused persons named in the first information report.

6. It is also admitted position that trial of some of the accused persons is going on, it was open to the Petitioner to take shelter of provisions as contemplated u/s 319 of the Code of Criminal Procedure to issue summons against the persons whose name was left by the Police on any ground but nothing of the kind perhaps is done.

7. Since cognizance is taken on earlier occasion may be treated operative against all phases of outcome of the investigation, the impugned order is not sustainable. The Court below ought to have left the matter for consideration of the court of sessions at the stage of hearing on the point of charge where trial of other accused persons are going on.

8. In the result, the application is allowed. The impugned order is set aside. The court below is directed to take necessary steps in accordance with law at the earliest.