
(2007) 07 PAT CK 0011

In the Patna High Court

Case No : Criminal Miscellaneous No. 1992 of 2006

Laldeo Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (2007) PLJR 680

Hon'ble Judges : Subhash Chandra Jha, J

Bench : Single Bench

Advocate : Sunil Kumar and Ranjit Kumar, for the Appellant; Vijay Kumar, for the Respondent

Final Decision : Allowed

Judgement

Subhash Chandra Jha, J.—The order under challenge is dated 9.12.2005 passed by the learned Addl. District & Sessions Judge, F.T.C. No. II, Jehanabad in ST. No. 520/2003 (F.T.C. II) whereby and where under he has rejected the petition filed u/s 319 of the Code of Criminal Procedure on behalf of the informant. The informant is the petitioner here. Being aggrieved by and dissatisfied with the aforesaid order he has come here for quashing the impugned order. Brief facts relating to the present case are as follows:--

That an F.I.R. at the instance of Laldeo Prasad as Sakurabad P.S. Case No. 18 of 2001 under Sections 147, 148, 149, 448 and 302 of the Indian Penal Code was drawn against Binay Bind and opposite party in respect of commission of murder of father of the informant. As per the allegation on 12.3.2001 at about 6 in the evening the petitioner and one Binay Bind arrived at the Darbaja of the informant. It has been stated in the F.I.R. that Binay Bind was armed with pistol whereas the accused Anuj Bind armed with gun, Akhilesh Bind armed with lathi, Bhola Bind were armed with lathi arrived. Of-course mother, wife and sister of Bijay Bind were unarmed but all of them came on the Darbaja of the informant

and surrounded his father and Bijay Bind opened fire from pistol causing fire arm injury on the neck of the father of the informant as a result of which he fell down and ultimately succumbed to the injuries. Fardbeyan of Laldeo Prasad, the informant was recorded in the Hospital where victim was brought for treatment. The genesis of occurrence as stated in the Fardbeyan is an altercation having been ensued between Binay Bind and mother of the informant in the same morning of the incident and as such she was extended threat by Binay Bind. Further it has been stated that Binay Bind and his entire family members had been to the place of the informant due to previous grudge and enmity for committing murder.

2. Contention has been advanced by the learned counsel for the petitioner that as a matter of fact such factum of allegation as stated in the F.I.R. has been corroborated in course of investigation by the witnesses but even then the I.O. submitted charge-sheet only against Binay Bind exonerating rest accused persons with the result that cognizance only against Binay Bind was taken and rest accused persons who are opposite party here were discharged.

3. It has further been submitted on behalf of the petitioner that as a matter of fact the trial proceeded and in course of trial three witnesses, namely, Laldeo Prasad, the informant, Devanti Devi, mother of the informant and Bimal Bind have stated and fully corroborated the facts incorporated in the Fardbeyan of the informant and in such a situation the intention of these opposite party for whose trial, be came here was quite clear right from beginning, otherwise there was no occasion for them to arrive at the Darbaja of the informant variously armed with gun, pistol and lathi, just in order to score previous grudge and enmity and by way of vengeance; because of some exchange of hot words had ensued between Binay Bind and mother of the informant in the same morning of the occurrence. In support of his contention, learned counsel for the petitioner has also submitted that of course there was discharge of these opposite party at the time, when cognizance order was passed, on submission of the charge sheet only against one but that discharge would not come in the way, so far trial of the opposite party against, whom legal evidence has come in course of trial of Binay Bind, in view of the decision reported in Bishwanath Tato and Others Vs. The State of Bihar

4. On the other hand, learned counsel for the opposite party relying of the decision reported in Smt. Lalita Devi and Another Vs. Nandu Singh and Another, has submitted that once the order of discharge in respect of opposite party has been passed, they can not be asked to face trial, when there is absence of any premeditated design or intention to commit murder or specific absence of any manner of participation in the crime. According to him, once the order of discharge has been passed the opposite party can not be asked to face the trial for the same set of evidence or statements whatsoever it may be, for which it was considered fit for their discharge at the time of passing of cognizance order, on submission of final form.

5. Learned A.P.P. for the State has also been heard.

6. Having considered the aforesaid facts and circumstances, the case law relied upon and cited by the learned counsel for the opposite party is not applicable to the present facts and circumstances of the case, which is mainly related to an offence punishable under sections 341, 323 and 324 of the Indian Penal Code which are exclusively triable by the learned Judicial Magistrate Ist Class and not by the court of session. The case law cited by the learned counsel for the petitioner in the present facts and circumstances of the case is applicable as it has been rightly submitted that such discharge at the time of passing of cognizance order would not come in the way for trial of these accused persons against whom legal evidence has come in course of trial.

7. Learned counsel for opposite party has also submitted that such accused persons can only be tried when there is every possibility of probable conviction and learned court below has come in the negative so far probability of their conviction is concerned.

8. Having considered the aforesaid facts and circumstances it can not be said at this stage that there is no chance of probable conviction in view of the fact that such arrival of these opposite party armed with gun, pistol and lathi at the Darbaja of the informant for the reason that there was altercation between other family members of Binay Bind and mother of the informant on the same morning to score their grudge. They had no business or authority to enter into the house or Darbaja of the informant in such a manner and so it can not be said that there is no chance of probable conviction. In the facts and circumstances of the case, the impugned order is hereby quashed and this application is allowed. The court below shall pass order after hearing learned counsel of both sides in accordance with law.