

(2001) 08 PAT CK 0072

In the Patna High Court

Case No : Criminal Miscellaneous No. 21317 of 1996

Matuki Giri @ Dharam Nath Giri, Ram Narayan Dubey and
Parmanand Dubey @ Parmanand Dwivedi

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 16-08-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 173, 482
Explosive Substances Act, 1908 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 341

Citation : (2001) 4 PLJR 117

Hon'ble Judges : P.K. Sinha, J

Bench : Single Bench

Advocate : Y.V. Giri, Raju Giri and S.K. Giri, for the Appellant; Rudra Deo Kr. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Sinha, J.—This is an application u/s 482 of the Code of Criminal Procedure ("the Code" in short) filed by Matuki Giri and two others for quashing the order dated 5.10.1996, so far these Petitioners are concerned, recorded by the learned Chief Judicial Magistrate, Gopalganj in G.R. Case No. 702 of 1994 by which cognizance of offence under Sections 3 and 4 of the Explosive Substances Act was taken against the Petitioner.

2. Brief facts of the case are that Petitioner Ram Narayan Dubey had filed First Information Report on 16.4.1994 alleging that on the preceding day Munna Tiwari and Murari Dubey had come with bombs in a "Jhola" and arms and Munna Tiwari threatened with bomb. Subsequently on "bulla" of Matuki Giri, the villagers came running and caught Munna Tiwari with two live bombs but co accused Murari Dubey succeeded in escaping, claiming that the informant had suffered injuries having been assaulted by Murari Dubey. Thereafter, it appears that investigation proceeded and the police submitted first charge sheet showing

(in column 2 of the charge sheet) Matuki Giri and Parmanand Dubey as not sent up also showing Ram Narayan Dubey, Munna Tiwari and Murari Dubey (in column 3 and 4 of the charge sheet) either in custody or on bail, also noting that the investigation was continuing against Matuki Giri and Parmanand Dubey. It appears that subsequently after completion of the investigation charge-sheet was also submitted against Ram Narayan Dubey, Parmanand Dubey and Matuki Giri under Sections 3 and 4 of the Explosive Substance Act.

3. Learned Counsel for the Petitioner argued that from the seizure list it would appear that the two bombs were recovered from Munna Tiwari still the police after biased investigation and recording statement of some of witnesses that those two bombs were planted by Matuki Giri and two others, filed charge-sheet against the Petitioners, also submitting that there was no prima facie material in the case diary to support the allegation. It was also argued that if charge sheet was to be submitted against the Petitioners, the police or some one should have filed separate first information report but on the basis of same first information report which was essentially against Munna Tiwari and one other, the police could not have submitted charge-sheet against the Petitioners.

4. Learned Additional Public Prosecutor in reply pointed out that investigation against Petitioners had continued, whereas chargesheet was submitted against Munna Tiwari and Murari Dubey, also because, as would appear from the case diary that after submissions of the charge-sheet the sanction order of the competent authority was obtained for filing charge-sheet under Explosive Substances Act and the report of the examination of the seized bombs was also received after that. Learned Counsel for the State also submitted that after submission of the charge-sheet sufficient evidence had come that the Petitioners were instrumental, after some assault was committed by the two accused against whom first charge-sheet was submitted, to have planted two bombs after bringing the same from the house of Matuki Giri for aggravating the allegation against him.

5. In so far as the filing of the separate charge sheet is concerned, filing of information before police relating to the commission of cognizable offence u/s 154 of the Code of Criminal Procedure initiates action by the police. Thereafter by various provisions under the Code the law provides for investigation which, however, do not inhibit the police to find out what offence actually was committed and who were the culprits and there is nothing in the Code which circumscribes the police to investigate a crime within the parameters settled by first information report. In course of investigation the police may find out by evidence as to what offence or offences were committed and which person/ persons had committed such offence and having come to a finding in that regard the police submits its report to the Magistrate u/s 173 of the Code. There is no law prohibiting that persons other than mentioned in the F.I.R. including the informant could not be proceeded against if the police finds that he or they had hand in commission of a crime.

6. When queries in that regard were made to the learned Counsel for the Petitioners, learned Counsel admitted this legal position but strongly argued that the police submitted charge-sheet against the Petitioners without sufficient evidence i.e., without having a prima facie case made out against them. On this score learned Counsel has brought to my notice Annexure-6, which is copy of the seizure list, submitting that it was the police which had seized the bombs and noted in the seizure list that the same were recovered from Munna Tiwari. However, from the facts of the case as well from reading of Annexure-6 it will appear that it was Petitioner Matuki Giri who had produced two bombs claiming that the same were recovered from Munna Tiwari. No doubt there are witnesses in the case diary who had supported this but as pointed out by the learned Addl. Public Prosecutor, in paragraphs 25 to 28 of the case diary witnesses had also claimed that after quarrel Munna Tiwari was caught hold of but bombs were, allegedly, so planted by Petitioners and then, as claimed the same were shown to have been recovered from Munna Tiwari when the police arrived there. In view of this, it can hardly be argued that there is no evidence to proceed against the Petitioners in the case.

7. In so far as filing of the charge-sheet against Munna Tiwari and another under Explosive Substances Act is concerned which, according to the learned Counsel for Petitioners, allegation was also supported by some witnesses, the learned lower Court is competent, to look into the matter, placing reliance on the material not only on the charge-sheet but taking into consideration the overall evidence on record, while considering framing of the charge.

8. One more point may be mentioned here. In the original charge-sheet Matuki Giri and Parmanand Dubey were shown in column 2 of the charge-sheet and Ram Narayan Dubey, who is one of the three Petitioners, was mentioned in column 3 whereas Munna Tiwari and Murari Dubey were arrayed as accused in column No. 4 against whom the charge-sheet was submitted u/s 341 and 323 of the Indian Penal Code.

9. In supplementary charge-sheet after completion of investigation, in column 4 only the names of Parmanand Dubey and Matuki Giri have been mentioned. As per the averments of the charge-sheet this should be read with the earlier charge-sheet bearing No. 52 of 1994 as in the subsequent charge-sheet the Investigating Officer has mentioned that charge sheet was submitted against the accused noted in column 3 and 4 of both the charge-sheets. Hence, the subsequent charge-sheet also makes Ram Narayan Dubey an accused.

10. In view of the aforesaid, I find no merit in the application which is dismissed. However, it is made clear that no observation made in connection with this application should be taken into consideration by the learned lower court while hearing on the matter of framing of the charges, or in course of trial.