

(2007) 05 PAT CK 0022
In the Patna High Court
Case No : Cr.WJC No. 73 of 2006

Md. Shahabuddin

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Arms Act, 1959 — Section 25(1B)A, 26
Criminal Procedure Code, 1973 (CrPC) — Section 212, 219, 220
Electricity Act, 1910 — Section 39, 44
Penal Code, 1860 (IPC) — Section 379, 414, 71
Telegraph Act, 1885 — Section 20, 21

Citation : (2007) 2 PLJR 854

Hon'ble Judges : Shyam Kishore Sharma, J

Bench : Single Bench

Advocate : Naresh Dixit, for the Appellant; Harendra Pd. Singh and Dr. Kumar Amitesh, for the Respondent

Final Decision : Dismissed

Judgement

Shyam Kishore Sharma, J.—Through this writ application the petitioner prays for issuance of a direction to the respondents to amalgamate the FIR Nos. 41, 42, 43, 44 and 48 of 2005 relating to Hussainganj Police Station Case on the ground that all the FIRs have been arising out of one raid conducted in the house of the petitioner on single day i.e. on 24.4.2005 on a different point of time starting from 8 AM to 5.30 PM. According to the petitioner Hussainganj P.S. Case Nos. 41, 42, 43 and 44 of 2005 have been registered on the basis of written report of Officer Incharge of Hussainganj Police Station whereas Hussainganj P.S. Case No. 48 of 2005 has been registered on the basis of written report of Electrical Works Engineer, Siwan. Hussainganj P.S. Case No. 42 of 2005 has been registered u/s 414 of the Indian Penal Code, Section 25(1-B)A/26 of the Arms Act, Sections 20, 21 of the Telegraph Act. Hussainganj FIR Case No. 48 of 2005 is u/s 379 of the Indian Penal Code, Sections 39 and 44 of the Indian Electricity Act. Hussainganj P.S. Case Nos. 43 and 44 of 2005 have been registered for the offences under

sections 25(1-B)/A/26 of the Arms Act. Hussainganj P.S. Case No. 41 of 2005 is for the offences u/s 414 of the Indian Penal Code.

2. Submission of the learned counsel for the petitioner is only to the extent that there was one raid in which some articles were recovered but only with a view to tarnish the image of the petitioner he has been implicated in different cases..

3. The stands of the respondents is that Hussainganj P.S. Case No. 41 of 2005 was registered on the basis of written report of Sub-Inspector B.K. Pandey. Hussainganj P.S. Case Nos. 42/05, 43/05 and 44/05 were registered on the basis of self-statement of S.I. Ranvijay Singh, Officer-Incharge Hussainganj Police Station. The District Magistrate in course of holding Janta Darbaron 23.4.2005 at Pratappur received public complaint about the criminal activities of the petitioner and accordingly a raid was conducted in presence of two Magistrates. Raid led to recovery of many incriminating articles including prohibited arms and ammunition, articles used by Army like Night Vision device, Walkie-Talkie, Telescopic rifle, bullet proof jackets, several magazine of different Arms, foreign currencies and many suspected four wheeler and two wheelers. All the recoveries were made from the different houses and places belonging to the petitioner. Hussainganj P.S. Case No. 41 of 2005 was with regard to recovery of Tata Saira Car, Maruti Van, three Yamaha motorcycles, One Bajaj CT 100 motorcycle and one L.M.L. Freedom motorcycle from the southern compound of newly constructed house of the petitioner. At the time of recovery for those vehicles the father of the petitioner told that all the vehicles were parked there since long before the arrest of the petitioner. Regarding other articles also it was stated that all belongs to the petitioner. Hussainganj P.S. Case No. 43 of 2005 related to recovery of illegal arms and ammunitions including photographs showing petitioner with the killed deer. That seizure was made from the middle room of the house which was in possession of the petitioner. Hussainganj P.S. Case No. 44 of 2005 was in connection with recovery of German made laser pistol with magazine and large number of cartridges and bullets of Pakistan ordinance factory and several charger kept beneath the bed of the petitioner in his bed room of his ancestral house. Recovery in connection with Hussainganj P.S. Case No. 41 of 2005 relating to arms and ammunitions was from three different places at three different times. The respondents have never tried to tarnish the image of the petitioner. The huge quantity of seizure from his house itself shows his character.

4. The amalgamation of the cases has been sought as per Section 220 of the Cr.P.C. which is reproduced below:

"220. Trial for more than one offence.-(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust

or dishonest misappropriation of property as provided in sub-section (2) of Section 212 or in sub-section (1) of Section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts.

(5) Nothing contained in this section shall affect Section 71 of the Indian Penal Code (45 of 1860)."

5. Submission of the petitioner is that Section 220 Cr.P.C. is mandatory in nature. All the allegation against the petitioner appears to have been taken place in the same transaction. The raid was made at one place therefore, all the cases should be amalgamated and the cases should be heard together otherwise this will amount to repetition of evidence because the accused is only one person and witnesses of most the cases are same.

6. Learned counsel for the petitioner has relied upon the judgment reported in 2001(2) BBCJ 223 in case of T.T. Antony vs. State of Kerala and ors. but facts of the case of that case were different, from the facts of the present case.

7. It has been submitted at the time of argument that in all the cases charge-sheet has been submitted and in some cases trial has also started and witnesses are being examined, therefore, fact remains that the cases are not at similar footing at the present time.

8. I have gone through the seizure list. There are some variations in the place of seizure and it cannot be said that seizure was made from one place.

9. The condition precedent for amalgamation of cases u/s 220 Cr.P.C. is the cardinal principle of law that when facts comprising the several offences are committed together in such a way as to constitute a continuous offence then such actions may be said to be of one transactions. Offences committed at different places are not offences which can be said to have been taken place in one transactions. Section 220 Cr.P.C. is enabling section in order to assist the progress of the cases. The first element to establish is that the series of the acts were such which can be said to have taken in same transaction. Mere consequence of time is not the only condition rather some other condition must be followed. There must be one connecting thread of a common purpose. "Same

transaction" is not definite any where. Therefore, ordinary use of language must be seen which is to see that as to whether the offence was of one transaction or several transactions. The question whether a series of acts are so connected together as to form the "same transaction" is a question of fact in each particular cases depending upon the proximity of the place, time and continuity of action. Theft of electricity is itself a separate transaction, recovery of number of prohibited articles including arms, night vision-devices and cartridges cannot be said to be an act of same transaction. Section 220 Cr.P.C. is enabling section. The stages of the cases are different. In some cases investigation are complete. In some cases the trial is going on. All cases are at different stages. In view of the recovery of number of articles of different nature at different places and at different times and also in view of the stages of the cases which are different, I am not inclined to allow the prayer of the petitioner. This writ application fails. Accordingly, it is dismissed.