
(2000) 12 PAT CK 0042

In the Patna High Court

Case No : Criminal.W.J.C. No. 161 of 2000

Nand Kishore Sharma and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-12-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 201, 302, 34, 342

Citation : (2001) 1 BLJR 405 : (2001) 1 PLJR 790

Hon'ble Judges : M.L. Visa, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Visa, J.—Petitioners have filed this application for quashing the FIR of Konch PS Case No. 28 of 1989 under Sections 302 and 201 of the Indian Penal Code and 27 of the Arms Act (Annexure-3).

2. The case of the petitioners is that Konch PS Case No. 28/89 was registered against unknown and the police after investigation has submitted charge-sheet No. 11/95 dated 31.5.1995 under Sections 342/302/34/109/201 of the Indian Penal Code and 27 of the Arms Act against the petitioners (Annexure-3/1) but cognizance has not been taken by the Chief Judicial Magistrate, Gaya, where the case is still pending because of want of sanction by the State Government against the petitioners.

3. Earned Counsel appearing on behalf of the petitioners has submitted that in the charge-sheet (Annexure-3/1), the I.O. has stated that an application has been sent to Superintendent of Police, C.I.D. (C), Patna through proper channel for according sanction from the State Government but the sanction has not yet been obtained.

4. Junior Counsel to Government Advocate appearing on behalf of the State-respondent No. 1 on 6.12.2000, produced a letter No. SP-36/99/4340 dated 4.12.2000 of Law Department, Government of Bihar, addressed to Government

Advocate stating therein that no proposal in the Law Department has been received in respect of granting sanction and, therefore, no such matter is pending in the Law Department. However, no counter-affidavit has been filed on behalf of the respondents.

5. Earned Counsel appearing on behalf of the petitioners has submitted that in Konch PS Case No. 26/89 in which also charge-sheet against petitioners was submitted this Court in Cr.W.J.C. No. 82 of 1999 has quashed the prosecutions of petitioners for want of sanction (Annexure-7). According to him, the present case is related to that very case and the point involved in this case is similar.

6. It is own case of petitioners that they had earlier moved this Court seeking the same relief but their application was dismissed on merit on 21.7.1998 (Annexure-1). Petitioners thereafter again filed Cr.W.J.C No. 403 of 1999 but it was also dismissed as withdrawn. In view of the fact that prayer of petitioners for same relief has already been rejected by this Court earlier, this application is not maintainable and is liable to be dismissed. Besides this, I find that the I.O. by raising the question of sanction for prosecution of petitioners in a case of murder in which during the course of investigation the allegation against the petitioners as disclosed in the FIR has been found prima facie true for submitting charge-sheet has got the matter pending indefinitely because, as stated above, no proposal to the Government has been sent for granting sanction.

7. In view of the aforesaid fact, the Chief Judicial Magistrate, Gaya, where the charge-sheet is said to have been submitted, is directed to proceed further in the matter without waiting for sanction. He will examine the matter on the question of requirement of sanction at the time of passing orders on the point of taking cognizance after giving opportunity to petitioners of being heard on the question of requirement of sanction in this case.

8. With this observation, this application is dismissed.