
(2007) 02 JH CK 0010
In the Jharkhand High Court

Parasnath Rai @ Prof. Parasnath Rai

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 14-02-2007

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 1, 161, 164, 173, 193

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2007) CriLJ 3094

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—The petitioner, in the instant application u/s 482 of the Code of Criminal Procedure, has prayed for quashing the order dated 13.11.2006 passed by the learned Chief Judicial Magistrate, Sahebganj in G.R. No. 305 of 2005 arising out of Sahebganj (T) P.S. Case No. 131 of 2005, whereby the learned Magistrate took cognizance of the offences under Sections 147, 148, 149, 341, 323, 326, 335 and 307 of the Indian Penal Code and u/s 27 of the Arms Act against the petitioner and other persons, although the investigating officer by virtue of the charge sheet submitted by him, did not recommend the petitioner for trial for the aforesaid offences.

2. Facts of the case registered on the basis of the fardbeyan of the informant Badri Narayan Pandey on 1.9.2005 is that on the alleged date of occurrence while the informant was proceeding on his motorcycle and when he reached near Dipti Mission, two persons namely, Gautam Rai and Mahesh Rai signalled him to stop, but the informant did not stop, whereupon, both the aforesaid persons assaulted him with lathi and rod. The informant fell down along with his motorcycle on the road, where-after, on the exhortation of this petitioner, other accused persons namely, Bhim Rai, Rajeshwar Rai, Dinesh Rai, Bidhan Chandra Rai, Arbind Kumar Rai, Ganesh Rai, Radha Prasad Rai and Madho Rai arrived

armed variously with weapons and after surrounding the informant, they begun to assault him. The petitioner is alleged to have exhorted the others to kill the informant and also to burn the informant alive along with his motorcycle. Specific allegation is attributed to the accused particularly Dinesh of having inflicted knife injury on the informant and against the accused Bhim Rai of having set the informant's motorcycle on fire after pouring petrol over it. The assailants tried to drag the informant for putting him on the burning motorcycle, but when the local people and members of the informant's family came running on hearing informant's alarm, the assailants fled away. The motive for the assault is the alleged complaint lodged by the informant to the Deputy Commissioner, Sahebganj against the fake appointment of the members of the petitioner's family and against the black marketing of kerosene oil by the petitioner.

The case after registration was investigated by the police. After concluding the investigation, charge sheet was submitted against ten persons named in the F.I.R. However, the petitioner was not sent up for trial and a final report in favour of the petitioner was submitted by the investigating officer on the ground that no evidence could be available against the petitioner.

3. The learned Chief Judicial Magistrate, Sahebganj by his order dated 13.11.2006, on perusal of police report, proceeded to take cognizance of the offences not only against those accused persons who were sent up for trial, but also against the present petitioner.

4. Assailing the impugned order, the learned Counsel for the petitioner submits that the order taking cognizance against the petitioner, as passed by the learned court below, is totally illegal and against the provisions of law. Learned Counsel explains that the offences in respect of which cognizance was taken, is triable by the court of sessions and after cognizance of the offences having been taken, the learned Chief Judicial Magistrate was obliged to comply with the provisions of Section 208 Cr. PC followed by provisions of Section 209 Cr. PC as preparatory inquiry before committing the case to the court of sessions and at the stage of taking cognizance on the basis of police report, in absence of any protest petition filed by the informant, the learned Magistrate could not have taken cognizance of the offences against the petitioner who was not recommended for trial.

5. Learned Counsel for the State submits on the other hand that on examination of the police report, the learned court below was empowered to ascertain as to whether the materials available in the police report, do constitute any offence and if so, to find out as to the persons who should be called upon to face trial. Learned Counsel adds that from perusal of the impugned order, it would be apparent that the learned Magistrate after going through the police report, had found sufficient material to take cognizance of the offence against the petitioner also and, therefore, there appears no illegality in the impugned order.

6. As mentioned above, the investigating officer had submitted charge sheet recommending trial against certain accused persons, but did not recommend trial

of the petitioner on the ground that no evidence was collected against him to suggest his involvement in the alleged offences. It is also admitted that no protest petition was filed on behalf of the informant against the police report or against the failure of the investigating officer to recommend trial against the present petitioner. Likewise, before taking cognizance against the petitioner, no opportunity of hearing was afforded to him by issuing any notice.

7. As rightly submitted by the learned Counsel for the petitioner that after submission of the police report and after having taken cognizance of the offences, which in this case, appears to be sessions triable, the case proceeded to the stage of inquiry u/s 209 Cr. PC and for the purpose of supplying police papers to the accused as preparatory for committing the case to the court of sessions. At this stage, the learned Magistrate was not vested with any further authority or power to take cognizance of the offence against any person other than those sent up for trial by the investigating officer. The power to summon any person other than those sent up for trial in respect of the offence vests thereafter only to the court of sessions u/s 193 Cr. PC and the trial court has authority to summon such person to face trial in exercise of its powers u/s 193 Cr. PC and that too, if there is evidence collected during trial against such person.

8. The learned Magistrate while recording the impugned order has discussed elaborately the materials found in the police report and has assumed the powers for taking cognizance of the offences against the petitioner also even though, the petitioner was not sent up for trial on the ground that no evidence was available against him suggesting his involvement in the alleged offence and neither was any protest petition filed by the informant against the police report.

9. It is well settled in a case exclusively triable by a court of sessions, where no protest petition is filed against the police report, the committing Magistrate is not competent to take cognizance of offence against persons other than those recommended or sent up for trial, as mentioned in the police report. After perusal of the police report, if a Magistrate takes cognizance of the offences, he shall at once comply with the requirements of the provisions as laid down u/s 207 Cr. PC.

Section 207 Cr. PC lays down that in any case where the proceeding has been instituted on a police report and the accused appears or is brought before him, the Magistrate shall without delay furnish to the accused, free of cost a copy of the police report including the first information report, the statement of the witnesses recorded under Sub-section (3) of Section 161 Cr. PC, the confessions and statements, if any, recorded u/s 164 Cr. PC, any other document or relevant extract thereof forwarded to the Magistrate with the police report under Sub-section (5) of Section 173 Cr. PC. Similar is the requirement u/s 208 Cr. PC which obliges the Magistrate to supply a copy of the statements and documents to accused to other cases triable by court of Sessions. After having complied with the provisions of Section 207/208 Cr. PC if the offence is triable exclusively by the court of sessions, the Magistrate is to proceed with the commitment of the

case to the court of sessions.

10. Even from the bare reading of the aforesaid provisions, it is apparent that the powers of the Magistrate u/s 207/208 Cr. PC and Section 209 Cr. PC are limited. Even u/s 209 Cr. PC, the Magistrate is not empowered to apply his mind on the merits of the case and to find out as to who are the persons, besides those recommended for trial by the investigating officer, to face trial before the court of sessions. The power to proceed with other persons who appear to be guilty of the offence, rests thereafter exclusively with the trial court under the provisions of Section 319 Cr. PC.

11. Section 1 of Section 319 Cr. PC operates in an ongoing inquiry into or trial of an offence and the section when sought to be applied to any person other than the accused, essentially requires that there must be evidences recorded in course of inquiry or trial suggesting prima facie the guilt against him. It is apparent therefore, that the proceeding before the Magistrate u/s 209 Cr. PC are patently not trial proceeding and the Magistrate therefore u/s 209 Cr. PC, has no jurisdiction to take cognizance against any person other than those sent up for trial.

12. I am therefore of the view that the impugned order passed by the learned Chief Judicial Magistrate in G.R. No. 305 of 2005 corresponding to Sahebganj (T) P.S. Case No. 131 of 2005, whereby cognizance of the offence was taken against the petitioner, is against the provisions of law and is not maintainable. There is merit in this application and the same is hereby allowed. The impugned order dated 13.11.2006 passed by the learned C.J.M., Sahebganj in G.R. Case No. 305 of 2005 corresponding to Sahebganj (T) P.S. Case No. 131 of 2005, is hereby quashed. It is nevertheless made it clear that if an accused is not sent up by the police for trial, it does not amount to discharge of such person in the eye of law. He can very well be summoned to face trial under the provisions of Section 319 Cr. PC, if his involvement in the offence is suggested by the evidences of the witnesses recorded during trial.