

(2009) 01 PAT CK 0050

In the Patna High Court

Case No : Criminal Miscellaneous No. 51962 of 2007

Prabhan Singh @ Prabhan Kumar Singh, Sudama Singh and
Jai Ram Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Arms Act, 1959 — Section 25(1B)(A), 26, 35, 39
Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 482
Penal Code, 1860 (IPC) — Section 34, 414

Citation : (2009) 3 PLJR 647

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Abhinay Raj, for the Appellant; Jharkhandi Upadhaya, Assistant
Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—Three of the F.I.R. named accused of Kudra P.S. Case No. 48 of 2006, G.R. No. 431 of 2006 have filed this application for quashing of order dated 15.3.2007 passed in Cr. Revision No. 183 of 2006 / 29 of 2006 by Sri Himanshu Shekhar Pandey, learned Presiding Judge, F.T .C. No. III, Kaimur at Bhabhua, whereby while dismissing the revision he has affirmed the orders dated 20.6.2006 and 26.9.2006, whereby cognizance has been taken for offences punishable under Sections 414/34 I.P.C. and 25(1-B)(A), 26 and 35 of the Arms Act.

2. Briefly stated the prosecution case based on the self statement of S.I. Arbind Kumar, Officer Incharge, Kudra P.S. recorded at 9 A.M. on 21.4.2006, inter alia, is that police officials in course of a raid surrounded the house of one Prabhan Singh and one Sudama Singh in between 5 A.M. - 6 A.M. in village Keouri on receipt of information on previous night that the petitioners and others were assembling in the house with arms for possession of a piece of land. It is said

that on entering into the house of Prabhan Singh they allegedly saw some persons armed with fire arms and from a room of the house a country made pistol, 70 cartridges, magazine of S.L.R. with one cartridge, two Bindoulia purse containing Rs. 200/-, one Kawasaki Motorcycle and one Rajdoot motorcycle from the courtyard were recovered and seized and petitioners and few others were apprehended. No license for the same was produced by them on demand. Eventually after due investigation the chargesheet was submitted against the petitioners and 8 others under the provisions of the Arms Act and the investigation was kept pending in respect of the recovery of the motorcycle as also the sanction order. The partial chargesheet was submitted to prevent the release of the petitioners u/s 167(2) Cr.P.C. and subsequently after further investigation chargesheet was submitted on 6.7.2006 under Sections 414/34 I.P.C. and the sanction order of the District Magistrate was also filed. It further appears that accordingly cognizance was taken and on 14.8.2056 charges were framed and P.Ws. 1 and 2 were examined, cross examined and discharged.

3. It has been submitted on behalf of the petitioners that they are innocent and have been falsely implicated in this case and the very fact that the source of information had not been disclosed, it only goes to show that everything was done at the instance of Ram Dular Singh and son Pradeep Singh who had planted the arms in collusion and the show of recovery from the house of the petitioners was not the correct position. It was further submitted that the motorcycle belonged to Ram Bilas Upadhaya of Varanasi and Ram Lakhan Singh of Rohtas who had valid papers for the motorcycles being owners thereof and it would be apparent that during investigation of the case the papers submitted by these petitioners have been found to be valid. Grievance was also raised regarding filing of two separate chargesheets and it was also mentioned that the sanction order of the District Magistrate as required u/s 39 of the Arms Act would be submitted subsequently. The learned Counsel further sought to submit that the question of the motorcycles being stolen property was not correct since no evidence in that regard had been collected.

4. I have had the privilege of going through both the orders impugned i.e. that of the learned Magistrate taking cognizance and the revision court upholding the order taking cognizance and I find no apparent illegality in any of the two orders so as to interfere with them. The question of sanction for prosecution under the Arms Act not having been obtained the cognizance is vitiated is no more res integra in view of the decision of Janardan Rai Vs. The State of Bihar and Others, , wherein it has been held that so far as sanction for prosecution is concerned, it can be obtained even after the cognizance and that it was not mandatory that at the initial stage the sanction for prosecution should be obtained.

5. So far as the question of the motorcycles not being stolen property is concerned the same can be agitated at the time of framing of charge since this Court in exercise of jurisdiction u/s 482 Cr.P.C. is not required to look into or

reappraise the evidence in support thereof or otherwise.

6. There is another aspect of the matter inasmuch as charges have already been framed and two prosecution witnesses have already examined. In that situation this Court would be loath to quash the order taking cognizance or the revisional court's order approving the order of taking cognizance.

7. Due regard being had to the facts and circumstances of the case I find no merit in this application which is accordingly dismissed.