
(2009) 07 PAT CK 0066

In the Patna High Court

Radhakant Rai, Ram Sagar Singh, Awadhesh Singh and Sheo
Shankar Singh @ Budhan

APPELLANT

Vs

The State of Bihar and Ram Balak Kunwar

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Citation : (2009) 07 PAT CK 0066

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—Four of the eight F.I.R. named accused of Barauni P.S. Case No. 65 of 1998 committed to the Court of Sessions along with others for facing trial in Sessions Trial No. 205 of 1998 have prayed for the quashing of the order dated 3.1.2008 passed in the said Sessions Trial by the learned Presiding Judge, Fast Track Court No. III, Begusarai, whereby he has rejected the petition filed by these petitioners u/s 227 Cr.P.C. for their discharge. An additional prayer has been made for quashing the order dated 18.6.1998 passed by the learned Chief Judicial Magistrate, Begusarai, whereby he had summoned these petitioners to face trial for the commission of offence u/s 302 I.P.C. although they were allegedly not sent up for trial.

2. Before I embark on the merit of the instant application I would like to clarify the legal position in respect of making of two prayers in one application. Admittedly, under the Rules, only one prayer is permissible in one application. In the instant application the petitioners have prayed for quashing of two orders which are 10 years apart, namely, order dated 3.1.2008 and order dated 18.6.1998. Unfortunately, the two orders are neither consequential to each other nor have any bearing on each other. The order dated 18.6.1998 has been impugned belatedly after almost 10 years of the passing thereof and that too when the case itself had made sufficient progress procedure wise. Since the order dated 18.6.1998 is sought to be challenged after such a prolonged delay and that too along with order dated 3.1.2008 and since only one prayer is permissible in one application, I refrain from entertaining the challenge to the said order and restrict this application to the extent of the challenge to order

dated 3.1.2008.

3. Now to the facts of the instant case, one Ram Balak Kunwar , impleaded herein as Opp. Party No. 2, gave his fardbeyan at 21.00 hours on 14.3.1998 in respect of an occurrence taking place earlier that evening at about 7.15 P.M.. According to the informant while he was going to purchase biscuits for his grand son, the son of Manoj Singh, he saw all the 8 F.I.R. named accused sitting on the verandah of Jemra Primary School. As he proceeded further and reached near the railway line, he was met by Mukesh Singh who reminded him about the purchase of biscuits for his son. Having purchased the biscuits, the informant enroute to his home engaged himself in conversation with others and after some twenty minutes proceeded for home. It is alleged that as he reached near the railway line he saw Karu Singh, Karaila Singh, Ravi Ranjan Singh, Ganauri Singh and Shiv Shankar Singh stealthily fleeing towards Dewna and when he reached near the school he saw Ram Shankar Singh, Awadhesh Singh and Radhakant Rai fleeing behind the school. On reaching the field adjacent to the school he found his 28 years old son, Mukesh Singh, lying dead in a pool of blood with his head severed. The cause of the occurrence is said to be the envy brooked by Ram Sagar Singh at his flourishing business and earlier attempts to cause damage thereto all of which had ended in failure and he had connived with the others to kill his son.

4. On the basis of the said fardbeyan the police case was registered against the 8 F.I.R. named accused u/s 302/34 I.P.C. and after due investigation the police submitted a chargesheet wherein the petitioners herein were not sent up for trial and only Karu Singh, Karaila Singh and Ganauri Singh were chargesheeted. However, the learned Chief Judicial Magistrate differed from the police report and took cognizance against all the F.I.R. named accused including these petitioners.

5. After the commitment of the case to the court of Sessions, the petitioners filed a petition for their discharge which was ceremoniously rejected by the impugned order.

6. Assailing the impugned order, it was submitted on behalf of the petitioners that not a single witness had admittedly seen the actual occurrence and the informant to settle his personal score had taken advantage of the death of his son and had falsely implicated innocent persons and the learned trial court had passed the impugned order in a mechanical manner. It was also suggested that the deceased being a veteran criminal may have been done to death by his rival group or by his own associates over sharing of the booty.

7. The petitioners are named in the F.I.R. and as per the story narrated in the F.I.R. they were seen sitting on the verandah of the school by the informant as he was proceeding to purchase biscuits and while returning, he saw the accused persons in two groups fleeing away and Mukesh Singh was found lying dead in a pool of blood. This by itself is sufficient circumstantial evidence against the petitioners of their having participated in the dastardly crime which can either be

proved or disapproved by leading of cogent evidence in course of the trial. At the stage of Sections 227 and 228 Cr.P.C. which are to be read in juxtaposition with each other, the Court is not meticulously to judge the evidence proposed to be adduced by the prosecution and not to see whether there is sufficient ground for conviction nor is any weight to be attached to the probable defence. The standard of test, proof and judgment which is to be finally applied before finding the accused guilty or otherwise is not to be applied at the stage of deciding the matter u/s 227 and 228 Cr.P.C. Gainful reference may be placed to the decision of State of Bihar Vs. Ramesh Singh, .

8. It would appear that sufficient materials, even though circumstantial, was available before the Sessions Court for presuming that the accused committed the offence and in my opinion has rightly rejected the prayer for discharge as made by the petitioners.

9. For the reasons stated above, I find no merit in this application which is dismissed.