
(2006) 04 PAT CK 0057
In the Patna High Court
Case No : Cr. Misc. No. 605 of 2002

Radhey Shyam Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-04-2006

Acts Referred:

Citation : (2006) 04 PAT CK 0057

Judgement

Rekha Kumari, J.—This is an application u/s 482 of the code of Criminal Procedure for quashing the order dated 3.10.8001 passed in S.Tr. No. 346/2000 whereunder the Sessions Judge, Siwan has held that no offence u/s 307 I.P.C. is made out on the basis of fee allegations and has framed charges under Sections 323/34 and 524/34 of the Indian Penal Code against the accused persons, i.e. O.P. Nos. 2 to 5, and has transferred the case u/s 228(1)(a) of the Code of Criminal Procedure to the court of Chief Judicial Magistrate, Siwan for trial.

2. Heard both the sides.

3. The prosecution case in brief is that the informant Radhe Shyam Prasad alongwith Santosh Kumar, Sri Ram Gupta and others was going to play Roll to the house of one Sri Ram Prasad. When they reached near the house of Hari Prakash Gupta @ Hari Jee (O.P.No.2), the servant of Hari Jee was sweeping the ground, some mud fell on the informant and his companion. The informant protested and then proceeded ahead. After half an hour when they were returning, all the accused persons, near the house of Hariji surrounded the informant and his companion and Hariji assaulted Santosh Prasad with iron rod on head, O.P. No. 4 Satrugan Prasad gave a farsa blow on the right shoulder of Sri Ram Gupta. The villagers intervened and the informant and his companion returned to their houses and then went to a canal for bath. After taking bath on their way back when they reached near the shop of Hariji, O.P. No. 4 Satrugan Prasad Informed his father Hari Prasad Gupta and O.P. Hari Prasad Gupta threw acid from a bottle on the informant and his companion causing injuries on the chick and other parts of the body of the informant. Sri Ram Gupta also received

burn Injury on his legs. The informant a lodged the F.I.R. and the police after completing investigation submitted charge sheet under Sections 324, 386, 307/34 of the Indian Penal Code . The learned Chief Judicial Magistrate also took cognizance against the O.Ps. for fee above offences and committed the case to the court of Sessions.

4. In the court of Sessions Judge, the O.Ps. filed a petition that no offence u/s 307 I.P.C. is made out in the case. The learned Sessions Judge heard the parties on the point of framing of charges. The learned Sessions Judge after perusing the case diary and the medical reports, wherein injuries have been stated to be simple, held that in fact no offence u/s 307 I.P.C., is made out on the materials available. There was, however, evidence under Sections 323/34, 324/34 I.P.C. against the accused persons. He, accordingly, passed the impugned order.

5. Learned Counsel for the petitioner Radhey Shyam Prasad submitted that the police had submitted charge sheet against the accused persons u/s 307 I.P.C. also. The learned Chief Judicial Magistrate had also issued process against them for that offence. There is sufficient material in the case diary and therefore, there was no justification for the learned Sessions Judge not to frame charge u/s 307 I.P.C. and transfer the case to the Chief Judicial Magistrate for trial.

6. Learned Counsel for O.Ps. 2 to 5 defended the order of the learned Sessions Judge.

7. It has been held by the Supreme Court in the case of *State Attychar Virodhi Parishad v. Dilip Nathumal Chordia and Anr.* (1989) S.C.C . 715. "If the Sessions Judge after hearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice which stares the court in the face. The opinion of any matter may differ depending upon the person who views it. There may be as many opinions on a particular matter as there are courts but it is no ground for the High Court to interdict the trial. It would be better for the High Court to allow the trial to proceed.

8. In this case also, the Impugned order shows that the learned Sessions Judge after hearing the parties and considering the materials on record has given a reasonable view. "Therefore, in view of the above decision it would not be proper for this Court at this stage to take an elaborate enquiry in shifting and weighing the materials to consider whether an offence u/s 307 I.P.C. is made out or not. This Court must allow the trial to proceed. If, however, during the course of trial, after some evidence the court finds that actually an offence u/s 307 I.P.C. is made out, as provided u/s 216 Cr.P.C., it may alter or add the charge. Therefore, the impugned order on this ground cannot be set aside.

9. However, from the record of this criminal miscellaneous case it appears that the O.P. Hari Prasad Gupta has filed a counter case against the petitioner Radhey Shyam Prasad & ors. which has been committed to the court of sessions and has

been registered as S.Tr. No. 887/2000 in which charge u/s 307 I.P.C. which is exclusively triable by a court of sessions has been framed and is pending in the court of Sessions Judge for trial.

10. It appears from the case of Sudhir and Others etc. Vs. State of M.P. etc., , that a case and the counter case both were committed to the court of sessions as both the cases involved offences triable exclusively by the sessions court . But, after hearing the preliminary arguments the Sessions Judge felt that in one case no offence triable exclusively by a Court of Sessions is involved, whereas in the other case a charge for offences including one triable exclusively by the Sessions Court could be framed. The Supreme Court held that "in such a situation, it is not necessary that the Sessions Court should transfer the former case to the Chief Judicial Magistrate for trial as envisated in Section 228(1) of the Code of Criminal Procedure. A Sessions Judge has its the power to try any offence under the Indian Penal Code. It is necessary for the Sessions Court that the offence should be one exclusively triable by a court of Sessions. The employment of word "may" at one place and the word "shall" at another place in same Sub-section (1)(a) of Section 228 unmistakably indicates that when an offence is not triable exclusively by Sessions Court it is not mandatory that he should order transfer of case to toe Chief Judicial Magistrate after framing a charge." In situations where it is advisable for him to try such offence in his court there is no legal objection to transfer the case to the Chief Judicial Magistrate. One of the instances for not making transfer is when a case and the counter case have been committed to the sessions court and one of these cases involves an offence exclusively triable by the sessions court and the other docs not involve any such offence.

11. Therefore, in view of the above decision of the Supreme Court, though according to the Sessions Judge no offence u/s 307 I.P.C. is made out in this case, on the materials available on record, as a counter case involving offence exclusively triable by a court of Sessions is pending in the sessions ease, the learned Sessions Judge should not have transferred the case to the Chief Judicial Magistrate for trial and should have proceeded wife the trial of the case. Hence, to that extent his order is not proper.

12. Accordingly, the impugned order is set aside in part as indicated above. It is also observed that in this case a sessions case Mo. 287/2000 being case and the counter case, both of them must be tried by the same sessions court and as indicated by the Supreme Court in the case of Sudhir & ors. (supra) the judgment in both the casts must be pronounced on the same day.

13. In the result, with the above observation the application stands disposed of in the manner mentioned above.