

(1974) 08 PAT CK 0024

In the Patna High Court

Rajendra Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-08-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 435, 437, 439
Penal Code, 1860 (IPC) — Section 147, 148, 307, 323, 324

Citation : (1975) CriLJ 1725

Hon'ble Judges : C.N. Tiwary, J

Bench : Single Bench

Judgement

C.N. Tiwary, J.—This revision application is directed against order dated 16-4-71 of the learned Additional Sessions Judge, Monghyr upholding order, dated 3-10-69 of the Munsif Magistrate, Monghyr directing that the case (State v. Gajadhar Singh and Ors.) should be tried before him as the materials on the records did not disclose offence u/s 307 of the Indian Penal Code, which is triable by Court of Session.

2. On the information lodged by the applicant Rajendra Prasad Singh the aforesaid case was instituted at the Barbiga police station on 16-8-68 under Sections 147, 148 and 324 of the Indian Penal Code against the accused persons, who are opposite party to this revision application. The police submitted charge-sheet against the accused. Cognizance of the offence was taken by the Subdivisional Magistrate and the case was transferred to the Court of the Munsif Magistrate Sri S.K.P. Verma, who decided to follow the procedure laid down in Chapter XVIII of the Code of Criminal Procedure 1898 (hereinafter to be referred to as "the Code") for holding enquiry. Against that order of the Munsif Magistrate Sri S.K. P. Verma accused persons preferred to this Court Criminal Revision No. 487 of 1969, which was summarily dismissed. After the transfer of the Munsif Magistrate Sri S. K. P. Verma the case was transferred to the file of the Munsif Magistrate Sri S.P. Sunderka, who held usual enquiry under Chapter XVIII of the Code and passed the order, dated 3-10-69 holding that a prima facie case under Sections 147, 148, 323 and 326 of the Indian Penal Code had been made out

and that the materials on the record did not disclose any offence u/s 307 of the Indian Penal Code. He, therefore, directed that the case should be tried before him, as it was not triable by the Court of Session. This order was obviously passed by the learned Munsif Magistrate under Sub-section (6) of Section 207-A of the Code. Against that order of the learned Munsif Magistrate the informant applicant preferred revision application No. 142 of 1969 before the Sessions Judge, Monghyr. That revision application was heard by the learned Additional Sessions Judge Sri B. N. Sahay, who without entering into the merit of the case, dismissed the revision application holding that in view of the decision of the Supreme Court in *Thakur Ram Vs. The State of Bihar*, a private party has no locus standi in a case instituted on police re-port and therefore, revision application filed by the informant applicant was not maintainable. Against that order of the learned Additional Sessions Judge this application in revision has been filed.

3. Mr. S.C. Mishra, learned Counsel for the applicant has contended that the learned Additional Sessions Judge has failed to appreciate that a private party has got locus standi in such a case and their Lordships of the Supreme Court have not laid down any general rule in *Thakur Ram's* case that a revision application by a private party is not maintainable. According to Mr. Mishra a revision application by a private party in a case instituted on police report is maintainable.

4. Mr. Kaushal Kishore Sinha, learned Counsel for the opposite party has on the other hand, submitted that in view of the decision of the Supreme Court in *Thakur Ram Vs. The State of Bihar*, a private party has no locus standi in a case instituted on police report and no revision application on behalf of such a private party is maintainable.

5. The observations of their Lordships of the Supreme Court in *Thakur Ram Vs. The State of Bihar*, on which reliance appears to have been placed by the learned Additional Sessions Judge, and on which the learned Counsel for the opposite party relies, are these:

In a case which has proceeded on a police report a private party has really no locus standi. No doubt, the terms of Section 435 under which the jurisdiction of the learned Sessions Judge was invoked are very wide and he could even have taken up the matter suo motu. It would, however, not be irrelevant to bear in mind the fact that the Court's jurisdiction was invoked by a private party. The criminal law is not to be used as an instrument of wrecking private vengeance by an aggrieved party against the person who, according to that party had caused injury to it Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book.

6. Mr. Mishra in support of his contention that no general rule has been laid down by their Lordships of the Supreme Court in *Thakur Ram Vs. The State of Bihar*, that a revision application by a private party in a case instituted on police report is not maintainable, has relied upon the decision of A. Singh, J. in *Nesar Ahmad Vs. Ekram Ahmad and Others*, . In that case A. Singh, J. has observed that their Lordships of the Supreme Court by the aforesaid observations do not want to lay down general law for every case. In support of this view A. Singh, J. referred to the following observations of their Lordships of the Supreme Court in *K. Chinnaswamy Reddy Vs. State of Andhra Pradesh*, :

It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice.

A. Singh, J. concluded thus:

It would appear that the Supreme Court did not mean to lay down, a general law that a private party cannot move the High Court to invoke its revisional jurisdiction under Section. 439, Code of Criminal Procedure. If the trial of a case by a Magistrate was without jurisdiction, in my opinion, the Sessions Judge in exercise of his powers u/s 437 and the High Court in exercise of its powers u/s 439, Code of Criminal Procedure, must have to Interfere, otherwise the trial would be void.

7. Mr. Nagendra Roy, learned Counsel appearing on behalf of the State (Opposite Party No. 1) has also submitted that no general law has been Laid down by their Lordships of the Supreme Court in the case of *Thakur Ram Vs. The State of Bihar*, that a revision application by a private party should not be entertained in a case instituted on a police report. He has relied upon the following observations of their Lordships of the Supreme Court in a recent case *Pratap Vs. State of U.P. and Others*, :

The power u/s 439, Cr. P. C. is one which the High Court can exercise suo motu and all that a person filing a revision petition under that section does is to draw the Court's attention to an illegal, improper or incorrect finding, sentence or order of a subordinate court.

8. With respect I agree with the aforesaid observation of A. Singh, J. in *Nesar Ahmad Vs. Ekram Ahmad and Others*, . It is true that a private party has no locus standi in a case instituted on police report and he has no right to demand an adjudication on an application in revision. As a matter of fact revisional power does not create any right in the litigant but only conserves the powers to see that justice is done. But it cannot be said that a private party has no right to bring to the notice of the Sessions Judge or the High Court any illegality committed by the subordinate court. At least in exceptional cases, indicated by

their Lordships of the Supreme Court in *K. Chinnaswamy Reddy Vs. State of Andhra Pradesh*, revisional jurisdiction may be exercised by the High Court on a revision application filed by a private party in a case instituted on police report. - It cannot, therefore, be said that their Lordships of the Supreme Court have laid down any general law that revisional application by a private party in a case instituted on police report is not maintainable and it cannot be looked into simply because it has been presented by a private party.

9. The words "barring a few exceptions" occurring in the aforesaid observations of their Lordships in *Thakur Ram Vs. The State of Bihar*, clearly indicate that there may be exceptional cases in which, on a revision application filed by a private party, revisional jurisdiction may appropriately be exercised. It has, however, been made clear by their Lordships of the Supreme Court that while dealing with a revision application filed by a private party it would not be irrelevant to bear in mind the fact that the Court's jurisdiction has been invoked by a private party and that the criminal law is not to be used as an instrument of wrecking private vengeance by an aggrieved party against the persons, who according to that party has caused injury to it. Keeping this fact in view if the court finds that there is some glaring defect in the procedure or there is manifest error on a point of Law and consequently there has been flagrant miscarriage of justice, revisional jurisdiction should be exercised.

10. Hence, the learned Additional Sessions Judge should not have dismissed the revisional application without considering the merit of the case on the ground that it was not maintainable.

11. Another question that arises for consideration is whether the order, dated 3-10-69 of the learned Munsif-Magistrate Sri S. P. Sunderka is such that it may be interfered with in revision. The learned Munsif-Magistrate on consideration of the materials before him was of opinion that the material on the record disclosed no ground for committing, the accused persons for trial before the Court of Session. He, therefore, decided that the case should be tried before himself. This order of the learned Munsif-Magistrate cannot be interfered with unless there is a legal defect of a serious nature resulting in failure of justice.

12. Mr. Mishra has submitted that there is evidence of P.W. 5 to the effect that accused Bhagwat Singh aimed a Garasa blow on the neck of Baleshwar Singh, who warded off by taking the blow on the right wrist, which was fractured. But admittedly there is no such allegation in the First Information Report or in the statement of Baleshwar Singh made before the police that Bhagwat Singh had aimed a Garasa blow on the neck of Baleshwar Singh. It is submitted on behalf of the opposite party that this is a development in the prosecution case made at the stage of enquiry. It has also been the prosecution case that accused Gajadhar Singh gave a Bhala blow on the right side of the shoulder of the informant Rajendra Singh causing two injuries 5"X 1/2" muscle deep and 2 1/2" X 1/2" muscle deep respectively. It is contended that the Bhala blow was given with the intention to cause death and therefore, the offence falls u/s 307 of the Indian

Penal Code. These are admittedly simple injuries. Mr. Kaushal Kishore Sinha has submitted that the intention of the assailant can be gathered from the quantum of force, that is applied in giving the blow. If the Garasa blow had been given with considerable force it must have caused more severe injuries. As the blow was not given with much force it is urged that the intention of the accused was not to cause murder of the informant.

13. In the First Information Report it is said that having learnt that accused Gajadhar Singh was getting the field of the informant ploughed, the informant Rajendra Singh, went there along with Baleshwar Singh empty handed and enquired from accused Gajadhar Singh as to why he was getting the field ploughed. Gajadhar Singh asked the informant to go away otherwise he would be killed. It is submitted on behalf of the opposite party that if the intention had been to kill the first informant, Gajadhar Singh would not have asked him to go away.

14. In order to constitute an offence of attempt to murder u/s 307 of the Indian Penal Code there must exist intention or knowledge, which is necessary to constitute murder combined with an act which falls short of the complete commission of that offence. The intention of the assailant is to be gathered not only from the nature of the weapon used and the parts of the body where the injuries are inflicted, but also from other circumstances and in some cases it may be ascertained even without reference at all to actual wounds.

15. In view of what has been stated above, the order dated 3-10-1969 of the learned Munsif-Magistrate directing that the case should be tried before him was quite proper. It does not call for any interference. This application is, therefore, dismissed.