

(1989) 04 PAT CK 0046

In the Patna High Court

Case No : Criminal Revision No. 1448 of 1986

Ram Ekbal Sah and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 21-04-1989

Acts Referred:

Arms Act, 1959 — Section 17, 27, 39

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

Citation : (1990) 1 PLJR 612

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Din Bandhu Singh, for the Appellant; Amarendra Prasad, for State and A.K. Singh Chouhan, for Opp. Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—This revision application is directed against the order dated 2.12.1986, whereby the learned 8th. Additional Sessions Judge has framed charges u/s 307 and 148 of the Indian Penal Code and Section 27 of the Arms Act against Ram Ekbal Sah, Petitioner No. 1, and Uma Prasad Sah, Petitioner No. 2, and under Sections 147 and 307/149 of the Indian Penal Code against Petitioner Nos. 3 to 6, namely, Jagdish Prasad Sah, Kamlesh Kumar Sah, Krishna Mohan Sah and Sachida Sah. Petitioner No. 3, Jagdish Prasad Sah has further been charged u/s 379 of the Indian Penal Code.

2. The short facts which led to the filing of this application are that on 8.6.1982 while the informant was returning from his field he learnt that the Petitioner Ram Ekbal Sah and others were digging foundation over the land which has been left out for the purpose of passage out of the land sold to him. Informant protested against the said digging. Thereupon it is alleged that Petitioner No. 2, Uma Prasad Sah, who was armed with gun and Ram Ekbal Sah, Petitioner No. 1, who had pistol fired at him, but he narrowly escaped and while he began to run away he was caught by them and was assaulted with lathi. The further case of the

prosecution is that when the brother of the informant came at the scene, he was also assaulted by Krishna Mohan and Kamiesh, Petitioners No. 5 and 4 respectively.

3. First information report was lodged and the police after investigation submitted charge sheet under Sections 147, 148, 149, 323, 324, 325 and 307 of the Indian Penal Code.

4. Cognizance was taken in due course and the case was committed to the court of Sessions giving rise to Sessions Trial No. 267 of 1983 which was transferred to the court of 8th Additional District and Sessions Judge, Rohtas at Sasaram for disposal and 2.12.1986 was fixed for framing of charge.

5. On 2.12.1986 after hearing the parties, charge was framed u/s 147 and 307/149 of the Indian Penal Code against four accused persons, namely, Petitioner Nos. 3 to 6 (Jagdish Prasad Sah, Kaclesh Kumar Sah, Krishna Mohan Sah and Sachida Sah) and charges under Sections 307 and 148 of the Indian Penal Code and 27 of the Arms Act were framed against Petitioner No. 1, Ram Ekbal Sah, and Petitioner No. 2, Uma Prasad Sah, and further charge u/s 379 of the Indian Penal Code was framed against Petitioner No. 3, Jagdish Prasad Sah and the case was fixed for further hearing on 10.12. 1986.

6. From the impugned order it appears that later on the same day i.e. 2.1-2.1986 a petition was filed at 3.15 p.m. on behalf of the accused persons stating there in that no case u/s 379 of the Indian Penal Code has been made out against Petitioner No. 3 and no case u/s 27 of the Arms Act is made out against the other accused persons. Therefore, it was prayed on their behalf that the charges u/s 379 of the Indian Penal Code and Section 27 of the Arms Act be dropped. Annexure-2 is the petition which was filed on behalf of the Petitioners in which a prayer was made before the learned Judge not to frame charges under the aforementioned Sections against the concerned accused persons. While disposing of the said application the learned Sessions Judge observed as follows:

Prayer has been made not to frame charge u/s 379 of the I.P.C. and 27 of the Arms Act. Charges u/s 379 of the I.P.C. and 27 of the Arms Act besides other Sections have already been framed against the accused person today after hearing the learned Addl. P.P. for the State and the learned Advocate for the accused persons prior to the filing of this petition. So this petition is meaningless.

7. It was contended on behalf of the Petitioners that so far as the offence u/s 379 of the Indian Penal Code is concerned, no case has been made out for this offence by the prosecution. Therefore, the framing of the charge under this Section is illegal and be set aside. It was further contended that so far as charges for the offence u/s 27 of the Arms Act is concerned, the prosecution under this offence is illegal since no sanction has been obtained from the District Magistrate, as required u/s 39 of the Arms Act. In support of his contention the learned Counsel relied upon a decision in the case of Amrendra Singh and Anr. v. the State of Bihar reported in 1987 PLJR 1022.

8. From the impugned order it appears that the Petitioners have also been charged under different sections of the Indian Penal Code including one u/s 307 which is triable exclusively by the court of Sessions. The grievance of the Petitioners is that so far as the framing of charge u/s 379 of the Indian Penal Code is concerned, no case has been made out at all under the aforesaid section. This fact can better be appreciated by the trial court during the course of the trial. In revisional jurisdiction this Court will not examine the facts of the case on merit during the pendency of the trial as to whether any case has been made out u/s 379 or not. Apart from this, the case has been committed to the court of Sessions and it is open to the court of Sessions to find out as to whether any case has been made out u/s 379 of the Indian Penal Code or not. In case, he finds that no case has been made out, he may pass appropriate order in accordance with law at the proper time.

9. So far as the other grievance of the Petitioners that no sanction has been obtained for the prosecution of some of the accused u/s 17 of the Arms Act is concerned, that point will also be available to the Petitioners before the trial court itself. Since the case is pending for trial before the Sessions Judge, this Court will not go into the facts of the case.

10. Besides this, the order framing charge by the Sessions Judge is an interlocutory order, which is not vulnerable in revision unless challenged on the ground of jurisdiction. It is more or less a procedural step and it does not determine or decide the question of guilt or innocence of the accused. In my view, such an order is no longer open to revision by this Court. Since the Petitioners are accused of some graver offences exclusively triable by the court of Sessions and the case is pending before the learned Additional Sessions Judge, the points which have been raised on behalf of the Petitioners can also be raised before the trial court, who will be in a better position to appreciate the points raised by the Petitioners here after having all the evidences adduced before him on behalf of the prosecution.

11. At this stage, I do not find any illegality in the impugned order. As I have indicated above that framing of charge is not vulnerable in revision, I am not inclined to interfere with the impugned order.

12. For the reasons stated above, the application is dismissed. However, there will be no order as to cost.

13. As the Sessions trial is of 1982, let the lower court records, if any be sent to the court below at once. It is expected that the court below will conclude the trial as early as possible.