

(2010) 11 PAT CK 0060

In the Patna High Court

Case No : Criminal Miscellaneous No. 40423 of 2007

Ram Prit Singh, Mithilesh Kumar and Satendra Kumar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Arms Act, 1959 — Section 25(1B)A, 26, 35
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2011) 59 BLJR 2141

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Three Petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 17.8.2007 passed by the learned Sub Divisional Judicial Magistrate, Masaurhi in Dhanarua P.S. Case No. 204 of 2004, by which charges were framed against three Petitioners and one another . Petitioners have further prayed for quashing of entire criminal proceeding in Dhanarua P.S. Case No. 204 of 2004 as well as order of cognizance dated 17.12.2004. In the case, cognizance order was passed for the offences under Sections 25(1B)A, 26 and 35 of the Arms Act.

2. Short fact of the case is that on 21.10.2004, an F.I.R. vide Dhanarua P.S. Case No. 204 of 2004 was lodged on self-statement of Sub-Inspector of Police of Dhanarua Police Station. As per the F.I.R. four persons were arrested on accusation of committing offences under Sections 25(1B)A, 26 and 35 of the Arms Act. From the F.I.R. it appears that the police had conducted a raid in a house, from where one Arbind Kumar was apprehended along with fire-arm. Immediately thereafter the police noticed that three persons were fleeing away from a dilapidated house. On chase, three persons, who are Petitioners before this Court, were arrested and thereafter all the four persons were made accused. Subsequently, the case was investigated and during the investigation, the police

did not find any material for forwarding the three Petitioners to face trial and, as such, chargesheet was submitted against only accused Arbind Kumar. However, three Petitioners were exonerated. After submission of the chargesheet in respect of accused No. 1, learned Magistrate oblivious with the fact that the Petitioners were exonerated by the investigating officer took cognizance of offences under the Arms Act against all the four accused including the Petitioners. Subsequently, on 17.8.2007 charges were also framed in similar manner against these Petitioners and one Arbind Kumar.

3. Aggrieved with the order of cognizance, framing of charge as well as initiation of criminal proceeding against the Petitioners, Petitioners approached this Court by filing the present petition. On 21.11.2007 the case was admitted for hearing and this Court also summoned the case diary and specially the order sanctioning the prosecution, which has been received and lying with the records of the case.

4. Sri Md. Imteyaz , learned Counsel for the Petitioners, while challenging the entire proceeding in Dhanarua P.S. Case No. 204 of 2004 , has argued that even the order of cognizance, which was passed on 17.12.2004 was completely mechanical and without application of mind. It was submitted that in the chargesheet itself, the police had categorically indicated that chargesheet was being submitted against only Arbind Kumar after obtaining prosecution sanction under the Arms Act. Learned Magistrate has taken cognizance of offences against the three Petitioners also, who were exonerated by the Police. It has been submitted by Sri Ahmad, learned Counsel for the Petitioners that even the learned Magistrate has not given any reason for differing with the police report. On perusal of the impugned order of cognizance, it was submitted, it appears that the learned Magistrate was of the opinion that the chargesheet was submitted even against the Petitioners and thereafter the impugned order was passed. In similar manner, at the time of charge, learned Magistrate has acted in perfunctory manner. Accordingly, it has been prayed to set aside the entire proceeding against the Petitioners.

5. I have also heard Smt. Indu Bala Pandey, learned Addl. Public Prosecutor appearing on behalf of the State. She is not in a position to controvert the statement made by the Petitioner to the extent that the prosecution sanction in respect of Petitioners was not obtained.

6. Besides hearing learned Counsel for the parties, I have also perused the materials available on record including the lower court record and case diary, from which it is evident that after completing investigation, the police had obtained prosecution sanction from the concerned Collector in respect of accused Arbind Kumar only and thereafter final report so far as these Petitioners are concerned was submitted. However, accused Arbind Kumar was forwarded by the police to face trial. After going through the record, the Court is of the opinion that the court below has passed both the orders, i.e. order of cognizance as well as framing of charges in complete mechanical manner, which requires to be interfered with.

7. Accordingly, the order taking cognizance dated 17.12.2004 and order dated 17.8.2007 , by which charges have been framed against the Petitioners as well as entire criminal proceeding in Dhanarua P.S. Case No. 204 of 2004 in so far as Petitioners are concerned are hereby set aside and the petition stands allowed.