

(2007) 04 PAT CK 0072

In the Patna High Court

Case No : Criminal Miscellaneous No. 26048 of 2006

Ram Sagar Sharma and Another

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 09-04-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 147, 148

Citation : (2007) 4 PLJR 369

Hon'ble Judges : Madhavendra Saran, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Madhavendra Saran, J.—Heard learned counsel for the parties. In this Misc. application filed (sic) 482 of the Code of Criminal Procedure (in short as Code) prayer has been made to quash the order dated 3.6.2006 whereby and whereunder learned Magistrate in cast No. 854/05 styled as Surendra Prasad Gupta @Bhola vs. Bijendra Prasad Suman & Ors, has taken cognizance u/ss 148 304, 120B of Indian Penal Code.

2. It appears that O.P No. 2 filed complaint case No. 854/05 against the two petitioners and others in the court of CJM Sitamarhi for offences punishable u/ss 147 148, 149, 307, 456, 302, 120B of the IPC and 27 of Arms Act. Learned CJM Sitamarhi by order dated 20.7.2005 or dated for calling a report from the District Magistrate, Sitamarhi on the allegations made in the complaint petition. It further appears that against the said order dated 20.7.2005 O.P. No. 2 preferred Cr. Rev No. 183/2005 before the learned Sessions Judge, Sitamarhi which was allowed by order dated 24.9.05 with certain observations and directions. Learned CJM, by order dated 3.6.2006 on remand considered the complaint petition, statement of wit-nesses examined during enquiry, post mortem report of two deceased and also enquiry report submitted by S.D.M Sitamarhi and after being satisfied that there was sufficient ground for proceeding against accused persons

took cognizance u/ss 148, 304B and 120B of the Penal Code Against the said order dated 3.6.2006 two petitioners being the accused have preferred the present application for quashino before this court.

3. Submission of learned counsel for the petitioners is that learned Sessions Judge by order dated 24.9.2005 remanded the matter for afresh consideration of the entire material including the question of sanction. On remand learned Magistrate considered the report of S.D.M., Sitamarhi and took cognizance without considering the question of sanction. Learned counsel pointed out that in the impugned order learned Magistrate has nowhere mentioned that as to why no sanction was required in the present case.

4. Learned counsel for the O.P. No. 2 on the other hand supported the impugned order and submitted that no interference is required by this court. He further submitted that the learned Magistrate in the impugned order has referred the observation given by the learned Sessions Judge on the question of sanction.

5. The present complaint case was filed for offences punishable u/ss 147, 148, 149, 307, 456, 302, 120B of the IPC and Section 27 of Arms Act. It appears from the impugned order of learned Magistrate that after remand 9 witnesses were examined by the Magistrate during enquiry. It further appears from the impugned order that the learned Magistrate considered the allegations made in the petition of complaint and also examined the statement of 9 witnesses recorded during the enquiry. He further examined post-mortem report of two deceased and also the report of S.D.M., submitted in the matter and after being satisfied took cognizance. It is not clear from the impugned order as to why learned Magistrate examined the report of S.D.M., Sitamarhi submitted in the matter. In this connection it has been submitted on behalf of the petitioners that there was no such direction of the learned Session Judge to the Magistrate concerned to look into the report submitted by S.D.M, in the matter. It further appears from the impugned order that the learned Magistrate has not assigned any reason as to why no sanction was required in the matter.

6. In the aforesaid facts and circumstances, this application is allowed and the Older impugned is hereby quashed. Learned Magistrate in session of the case is directed to pass afresh order in accordance with law.