
(1980) 10 PAT CK 0011
In the Patna High Court

Resham Lal Yadav and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 03-10-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 319
Penal Code, 1860 (IPC) — Section 395

Citation : (1981) CriLJ 976

Hon'ble Judges : Birendra Prasad Sinha, J

Bench : Single Bench

Judgement

Birendra Prasad Sinha, J.—This application is directed against an order dated 27th August, 1979 passed by the Additional Chief Judicial Magistrate, Araria in Bhargawa P. S. Case No. 7 (8) 74. By this order, the learned Additional Chief Judicial Magistrate took cognizance of the offence u/s 395 of the Indian Penal Code against the petitioners on the basis of a supplementary chargesheet submitted by the police.

2. In the night of 12/13th August 1974, a dacoity is said to have taken place in the house of the first informant Premlal Mahto. The information was lodged with the police in which the petitioners were also named as accused. On 14-4-1976, the police submitted charge-sheet against only two persons, namely Bindeshwar Mahto and one another. The final report was submitted against the petitioners. The first, informant thereupon filed a protest petition which was rejected by the Court on 8-8-1978. Cognizance was taken against the two charge-sheet accused persons and the case was thereafter committed to the Court of Session. On 28-3-1979, the learned Magistrate directed the police to send a copy of the order of the Superintendent of Police to re-open the case. He, however, observed that as the case has been committed to the Court of Session, the question of re-opening the case did not arise. On 8-5-1979, the learned Magistrate after perusing the order of the Superintendent of Police, directed the police to submit charge-sheet. The Charge-sheet was, accordingly, submitted by the police and the impugned order was passed on 27-8-1979.

3. Mr. S. C. Misra learned Counsel appearing on behalf of the petitioners has submitted that after the cognizance had been taken of the offence and the two accused persons had been committed to the Court of Session, the Police had no power to submit a supplementary charge-sheet except on receipt of further evidence oral or documentary.

4. The question for consideration, therefore, is as to whether without any further investigation and without the collection of further evidence, oral or documentary, a supplementary report can be submitted by the police.

5. Section 173 of the Code of Criminal Procedure ("the Code" for brief) provides for submission of a charge-sheet after the investigation is complete. Section 173(8) of the Code provides that a further investigation in respect of an offence can be made after a report under Sub-section (2) has been forwarded to the Magistrate and if the police obtains further evidence, he may forward a further report regarding such evidence to the Magistrate. Section 173(8) of the Code reads thus:

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed, and the provisions of Sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-section (2)

This is a new provision inserted in the Code of Criminal Procedure, 1973, The Police is not precluded from making further investigation in respect of an offence after the submission of a charge-sheet. If upon a further investigation, fresh evidence is available, the police can submit a supplementary charge-sheet. The question is as to whether in the present case the supplementary charge-sheet was submitted by the police on the basis of any further investigation and further evidence. 6. The letter of the Sub-divisional Officer directing the Officer In charge of the Police-Station to submit a supplementary charge-sheet is on the record. It appears that the D. I. G. of Police looked into the old file and ordered for submission of a supplementary charge-sheet against the remaining F. I. R. accused persons. The petitioners had also been named in the first information report. The Investigating Officer was ordered to submit a supplementary charge-sheet against the petitioners on the basis of the direction given by the D. I. G. of Police. In the supplementary charge-sheet which has been annexed to this application as Annexure-5, it is stated that the supplementary charge-sheet was being submitted as per order of the Superintendent of Police. It does not indicate that there was any further investigation and collection of fresh evidence against the petitioner. In the case of *Phulena Rai v. The State of Bihar* 1979 BBCJ 219 it was held that the investigation can be reopened and a supplementary charge-sheet can be submitted only on the basis of such materials which could

not come to the knowledge of the Investigating Officer during investigation and not as a routine affair. Learned counsel for the State could not point out any provision in the Code under which a supplementary charge-sheet can be submitted without further investigation and fresh evidence. In a situation like this, the prosecution may take recourse to the provisions of Section 319 of the Code which provides that where in the course of any inquiry into or trial of any offence it appears from the evidence that any person not being an accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. If, therefore, there is any evidence against the petitioners, it is always open to the prosecution to lead evidence at the trial and it will be for the trial Court to proceed against such persons for the offence, which they appear to have committed. So far as the present case is concerned, I am of the opinion that a subsequent charge sheet could not be submitted without further investigation by the police and without obtaining further evidence against the petitioners. That being so, the impugned order dated 27th August 1979 must be set aside.

7. In the result, the application succeeds and the order dated 27th August. 1979 passed by the Additional Chief Judicial Magistrate, Araria is set aside.