
(2002) 03 PAT CK 0046

In the Patna High Court

Case No : Criminal Miscellaneous No. 396 of 2000

Sheo Pratap Singh and Another

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 21-03-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 101, 173, 204, 209, 319
Penal Code, 1860 (IPC) — Section 120, 120B, 34, 344, 364A

Citation : (2002) 2 BLJR 903

Hon'ble Judges : Chandramauli Kumar Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Chandramauli Kumar Prasad, J.—This application has been filed for quashing the order dated 30.11.2000 passed by the Chief Judicial Magistrate, Saran in UT. 251/2000 whereby the learned Magistrate has directed for putting petitioner on trial and for commitment of the case to the Court of Sessions.

2. Facts, which are necessary for decision of this application are that one Rameshwar Manjhi gave a report to the Bhagwan Bazar police station on 21.10.1997 stating therein that on 21.10.1997 at 10.30 a.m., he was carrying children in a rickshaw including two girls, namely, Suchi Kumari aged about 10 years and Babloo Kumari aged about 8 years and one boy Ravi Kumar aged about 6 years who are daughters and son of Dr. Ram Ekbal Prasad. According to the report, when the rickshaw reached near Chamar Mai Mandir near bus stand at about 8.45 a.m., he saw two motor-cycles, one parked near Chamar Mai Mandir and another on the Main Road. According to him, when he reached near the corner of the Mandir, one person caught the handle of the rickshaw, stopped it and the other person lifted said Ravi Kumar from the rickshaw. According to the report, accused-persons were armed with revolver and said Ravi Kumar was taken on the Rajdoot motorcycle and two persons driving another motorcycle, went behind them.

3. On the basis of the said report, Bhagwan Bazar P.S. Case No. 139/97 was registered under Sections 364A/34,415 and 120 of the Indian Penal Code against unknown persons unknown. The names of the petitioners surfaced during the course of investigation but subsequently, charge-sheet u/s 364A, 368, 344, 120B and 34 of the Indian Penal Code was submitted against seven accused-persons excluding petitioners and the learned Magistrate, by order dated 4.2.1999, took cognizance of the offence against the charge-sheeted persons and the case was ultimately," committed to the Court of Sessions. However, the investigation in case of the petitioners was kept pending. Later on, final report bearing No. 44/2000 dated 8.5.2000 was filed against these two petitioners describing the accusation to be false.

4. However, an application was filed on behalf of the prosecution on 26.9.2000 to commit both the petitioners to the Court of Sessions for facing trial whereas petitioner No. 1 Sheo Pratap Singh filed a petition to accept the final report. It was contended before the learned Magistrate that there are sufficient material in the case diary showing their complicity in the crime and as such, they be also put on trial.

5. The learned Magistrate, on consideration of the material collected during the course of investigation found sufficient material showing, prima facie, their complicity in the crime and to put them on trial. Accordingly, both the petitioners, by the impugned order, were ordered to be put on trial and for commitment of the case to the Court of Sessions.

6. Mr. Shrawan Kumar, Senior Advocate, appearing on behalf of the petitioner"s submits that earlier charge-sheet was submitted against seven accused-persons and after taking cognizance of the offence, the learned Magistrate had, already committed the case to the Court of Sessions and as such, the learned Magistrate has become functus officio and, therefore, the impugned order, ordering the petitioners to be put on trial and for of the case to the Court of Sessions, is illegal. In support of his submission, he has placed reliance on a judgment of the Supreme Court in the case of Ranjit Singh v. State of Punjab (1988) 7 SCC 149, and my attention has been drawn to paragraph 14 of the judgment which read as follows:

14. The change made by the new Code in Section 209 is that it is the "case" which is committed to the Court of Sessions, and not the accused, but while committing the case to the Court of Sessions, the Committing Court has a further duty which is in respect of the accused in the case. Section 209 says that the committal Court has to "remand the accused to custody until such commitment has been made" subject to the provisions relating to bail. The accused referred to in the section is the accused against whom the Magistrate has already issued summons or warrant u/s 204(1)(b) of the Code. The said clause reads thus:

204 (1)-If in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be:

(a)* * * (b) a warrant case, he may issue a warrant, or if he thinks fit, summon for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

7. Additional Public Prosecutor appearing on behalf of the State and Sri D.N. Prasad appearing on behalf of opposite party No. 2 state that even after commitment of the case when the final report was submitted, nothing prevented the Magistrate to consider the entire facts and materials so as to prima facie find out the complicity of the petitioners in the crime. In support of their submissions, they have placed reliance on the judgment of this Court in the case of Devendra Singh and Ors. v. State of Bihar and Anr. 1998 (3) PUR 345, and my attention has been drawn to paragraph 4 of the judgment which reads as follows:

4. There is no dispute with regard to the settled proposition of law that it is wholly within the jurisdiction of the Magistrate to pass appropriate order even after cognizance has been taken on the basis of the report submitted by the police after investigation. Further, it is in the discretion of the Magistrate to pass appropriate order on the basis of the subsequent report submitted by the police u/s 173(8) of the Code. Here is not a case where the Chief Judicial Magistrate refused to exercise power u/s 173 of the Code on the ground that the cognizance has already been taken rather from perusal of the impugned order, it appears that the learned Magistrate has considered the entire facts of the case and also the evidence came on the record during investigation. Learned Court below took into consideration the fact that the allegation of assault on Indu Kumari and first aid given to her by the Doctor was substantiated by the seizure of the prescriptions by the police. Learned Magistrate also took into consideration the statement of the witnesses recorded u/s 101 of the Code to the effect that the deceased received injury on her person by means of Bhala and the said injury was substantiated by autopsy report available on the record. Learned Magistrate took into notice of the supervision note of the Dy. S.P. Sonapur and the S.P. Saran where the involvement of the accused was found. The Court below, therefore, on the basis of the materials on record came to the conclusion that both the cases filed by the informant Nand Kishore Singh and the case filed by the I.O. on his own fardbeyan against the informant and his companion for the alleged murder of Indu Kumari should be put on trial together so that justice would be made available to the party concerned. In my opinion, therefore, the decisions cited by the learned Counsel do not apply. In the facts and circumstances of the case, I do not find grave error of law in the impugned order passed by the Court below inasmuch as the Court below has exercised power u/s 173 of the Code and found that it is not a fit case where the petitioners should be exonerated at this stage.

8. Having appreciated the rival submissions, I do not find any substance in the submission of Shri Kumar. As stated earlier, police, after investigation, submitted charge-sheet against seven accused-persons and investigation in respect of the

present petitioners was kept pending. Accused-persons against whom charge-sheet was submitted, the Learned Magistrate took cognizance and ultimately, they were committed to the Court of Sessions to face trial. Thereafter, the police, after investigation, submitted final report and when the same came up for consideration, learned Magistrate found sufficient material showing prima facie the complicity of the present petitioners in the crime and accordingly, by the impugned order, he directed them to be put on trial and for their commitment to the Court of Sessions.

9. In the case of Ranjit Singh (supra), the issue before the Supreme Court was as to whether the Sessions Court can add a new person to the array of the accused in case pending before it at a stage prior to collecting any evidence and in that background, the Supreme Court held that once the Sessions Court takes cognizance of the offence pursuant to the committal order, the only other stage when the Court is empowered to add any other person to the array of the accused is after reaching evidence collection and only then powers u/s 319 of the Code of Criminal Procedure, can be invoked. Here in the present case, as observed earlier, the Sessions Court had not taken cognizance of the offence but the learned Magistrate before whom final report was submitted in respect of the petitioners against whom the investigation was pending, that he directed for putting them on trial taking into consideration the materials in the case diary showing their prima facie complicity in the crime. As such, the decision of the Supreme Court in no way supports the case of the petitioners. In my opinion, it is in the discretion of the Magistrate to pass appropriate orders on the basis of the subsequent report submitted by the police. The learned Magistrate had found sufficient material showing the complicity of these petitioners in the crime and accordingly, he ordered for putting the petitioners on trial and for their commitment to the Court of Sessions. I am of the considered opinion that the learned Magistrate possess such power. The view which I have taken, finds support from the judgment of this Court in the case of Devendra Singh (supra).

10. In the result, I do not find any merit in the application and it dismissed accordingly.