

(1983) 09 PAT CK 0008

In the Patna High Court

Case No : Criminal Miscellaneous No. 9117 of 1982 with Criminal Miscellaneous No. 9118 of 1982

Shiv Narain Choudhary and 3 Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 23-09-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8)
Penal Code, 1860 (IPC) — Section 144, 379

Citation : (1985) PLJR 935

Hon'ble Judges : M.P. Varma, J

Bench : Single Bench

Advocate : S.K. Mishra, B.K. Bariar and Bipin Dutta Pathak, for the Appellant;
Braj Kishore, for the Respondent

Judgement

M.P. Varma, J.—There are four applicants in both the cases aforementioned. The petitioner Sheo Narain Choudhary and Rajendra Choudhary appear in both. By a Bench order of this Court passed on 7.4.1982 both the applications are to be heard together. This order governs both the applications. Facts relating to Cr. Misc. No. 9117/82 in short are as follows. The case against the applicants of this petition was initiated pursuant to a report dated 4.3.1980 lodged by Sudama Devi wife of Uchit Tatma at P.S. Raghapur. On getting information the police registered Raghapur P.S. case No. 2 (3) 80. The allegation is that the applicants in between the night of 4.3.80 along with some others set fire to a hut belonging to the informant. The hut was in use as dwelling house and for the purpose of keeping articles of daily use. On hulla being raised,, persons of neighbourhood ran and made attempt to extinguish the fire. Considerable damage was caused due to the fire.

2. Informant Sudama Devi has further stated that even previous to this some of the accused persons had made attempts to destroy the hut and in course of which they had looted away some of the articles kept inside.

3. Criminal Misc. No. 9118/82 refers to the case lodged by Uchit Tatma, husband of Sudama Devi, reference regarding which has been given in the earlier case. The case against the applicants was registered at the same police station Raghopur on the statement of Uchit Tatma as Raghopur P.S. case No. 2 (2) 80. Allegation is that the applicants along with others in the night of 7.2.80 looted away some of the properties and even destroyed the hut which is used as dwelling house.

4. The police proceeded with the investigation and submitted final form in both the cases stating that the facts alleged were not true. Subsequently thereafter the police, on getting fresh materials took up further investigation and submitted charge-sheet u/s 173(8) of the Code of Criminal Procedure and the Sub-divisional Judicial Magistrate, in both the cases (i.e. in Raghopur P.S. case No. 2(2)80 G.R. case No. 42/80 and Raghopur P.S. case No. 2(3)80 G.R. case No. 71/80) took cognizance of the offence. The orders in both the cases passed by the Sub-divisional Judicial Magistrate are almost similar. The extract of the order, passed in Raghopur P.S. case No. 2(2)80 is as follows:-

.....The case record is put up. Perused the case-diary, F.I.R. and chargesheet. I find that prima facie case is made out u/s 144, 379 and 427, I.P.C. against the accused persons Accordingly cognizance of the offence under above mentioned sections is taken

5. Similarly the extract of the orders passed in Raghopur P.S. case No. 2(3)80 is as follows:

.....The case record is put up for orders in cognizance matter. Perused the record and the case diary. It appears that the witnesses have named the accused persons and also seen them running from the P.O. The I.O. has found signs of burning of the house at tie P.O..... I find that prima facie case is made out u/s 147, 436 I.P.C. against the accused persons..... Accordingly cognizance of the offence is taken u/s 147, 437 I.P.C. against all the accused four persons

6. The applicants of both the cases noted above have filed the applications u/s 482 of the Code of Criminal Procedure for quashing of the prosecution drawn up against them for their trial on charges aforesaid in both the cases. Their main grievance is that the order dated 21.1.82 taking cognizance of the offence and summoning the petitioners to take trial is wholly illegal and without jurisdiction. The learned Advocate Sri S.K. Mishra contends that after submission of the final form by the police, there being no fresh material, the submission of the charge-sheet is contrary to law and that the order of the Magistrate taking cognizance of the offence on such charge-sheet stands vitiated, as being. illegal and without jurisdiction.

7. It is a case, in which the Sub-divisional Judicial Magistrate did not pass any order on the final report in either of the two cases and the order summoning the petitioners to take their trial were, in fact, on 21.1.82 when the charge-sheets were placed before the court. The learned Advocate for the applicants submits

that from the cause-list of the court dated 17.10.1981 it would appear that the final form in both the cases were accepted by the court below and he further contends that once the final form was accepted it was not open for the Sub-divisional Judicial Magistrate to have taken cognizance of the offence against the petitioners.

8. It has also been urged that since there was. no fresh material for submission of the charge-sheet, the entire investigation must be deemed to be bad in law and any order taking cognizance of the offence on such a chargesheet should also consequently deemed to be a bad order.

9. Learned Counsel, while canvassing for the petitioners has placed reliance on the case of Pholena Rai Versus State of Bihar and others (1979 B.B.C.J. 219) and has argued that since there was no fresh material available, it was not open for the police to have reopened the investigation and submitted charge-sheet for taking action against the petitioners. The proposition of law appears to be well settled. Once a police officer investigating the case submits a final form and the accused on that account is discharged by the Magistrate competent to take cognizance, the case in a limited sense attains a finality. The police or the investigating agency on the same set of collected facts and materials cannot, in the garb of opening the investigation submit a charge-sheet, supposedly on a charge in view of that police officer. But I do not see any bar u/s 173 of the Code of Criminal Procedure, to the police officer in reopening the investigation, if subsequent to its close, some fresh materials have come to light to the police and in that case, if those fresh materials do make out an offence, it is quite competent of the police officer to submit charge-sheet. The order of a Magistrate taking cognizance of the offence and issuing process against the accused persons on such subsequent report of the police is a competent order. Judging the present case in the said premises I do not find any illegality in the impugned order. The learned Advocate however, has contended that in the instant case the Magistrate had accepted the final form in support of the contention. Photostat copy of the cause list has been filed. The letters in the photostat copy of the cause list are not clearly decipherable. Learned Advocate has pointed out that there is a noting in the cause-list of the fact that the final form in both the cases were accepted. In other words, an attempt has been made to argue that once the final form was accepted-by the Magistrate, it was not open for him to review the order and take cognizance of the offence on the subsequent report in the form of charge-sheet submitted by the police. The argument appears to be totally misconceived. In the petition it has been admitted that no specific order accepting the final form in either of the two cases was passed by the learned Magistrate. The case was not finally disposed of and the order taking cognizance on the charge-sheet was passed on 21.1.1982. I have already said that the photostat copy (stated to be the copy of the daily cause list of the court of the learned Sub-divisional Judicial Magistrate) is not readable. But even assuming that it indicates that final form in the aforesaid two cases were accepted, it will not be correct to read as an order of the court. The cause-list is issued as a

routine affairs for the convenience of the parties. The preparation of the cause-list is a ministerial act and any noting on the cause-list does not show that it has been done by a court applying its-judicial mind. It does not contain any reasoned order and admittedly it is not an order passed on judicial application of mind with regard to any case. Therefore, any noting on the cause-list will not read as an acceptance of the final form and in any view the order impugned in the instance cases can never be taken to be an order of review passed earlier by the court below. The court took cognizance of the offence on receipt of the charge-sheet in both the cases submitted by the police and there is absolutely no illegality in the orders impugned. The case of *Lakhan Saw and others V. State of Bihar* (1983 B.B.C.J. 112) referred to by the learned Advocate has no application to the present case. The High Court in the aforesaid case, on detailed consideration of the entire facts had taken the view that there was no proper investigation and materials brought on records were quite insufficient, rather doubtful to warrant conviction and it was on such consideration that the police investigation was branded as a bad investigation. The Hon''ble Judges sitting in appeal against an order of conviction acquitted the appellants giving them benefit of doubt. The case of the petitioner is quite different. At this stage there is no material before me to hold that the investigation was so bad as to create any doubt in the mind of a court regarding the accusation made against the applicants regarding causing damages to the hut, looting of, the articles kept therein and on some other date setting the hut on fire. The courts below on perusal of the F.I.R., the statements of the witnesses recorded in the case diary and also on consideration of the materials collected during the cause of investigation, acted on the charge-sheet submitted against" the applicants. The court finding a prima facie case took cognizance of the offence and issued processes against the applicant for taking their trial. I, therefore, do not. find any reasonable ground for interference with the orders impugned. Both the applications are therefore, dismissed.