
(1997) 04 PAT CK 0026

In the Patna High Court

Case No : Criminal Miscellaneous No. 5283 of 1992

Suresh Thakur and Ram Bilash Sah

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 24-04-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 304, 34

Criminal Procedure Code, 1973 (CrPC) — Section 173, 210, 210(1), 210(2), 210(3)

Citation : (1997) 2 PLJR 389

Hon'ble Judges : D.S. Dhaliwal, J

Bench : Single Bench

Advocate : Praseon Sinha, for the Appellant; Lala Kailash Behari Pd. and Sarvendra Kumar Verma, for Opp. Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

D.S. Dhaliwal, J.—The prayer in this petition u/s 482 of the Code of Criminal Procedure is for quashing of the order dated 9.4.1992 passed by the Chief Judicial Magistrate, Sitamarhi whereby he amalgamated Complaint Case No. C1/224/90 with the case instituted on police report being Belsand P.S. Case No. 21/90.

2. It appears that in respect to an occurrence dated 16.4.1990, a case u/s 304 read with Section 34 of the Indian Penal Code was registered in Police Station Belsand vide F.I.R. No. 21 of the even date. This case was registered against two named accused, namely, Ram Naresh Prasad and Rakesh Prasad and some other unknown accused. In respect to the same occurrence Anup Paswan, O.P. No. 2, filed a criminal complaint against seven persons by name, including the two Petitioners herein. It appears that the proceeding in the complaint was stayed during the tendency of the investigation as required by Sub-section (1) of Section 210 Code of Criminal Procedure. After completion of investigation the police submitted charge sheet against six persons. It may be noticed that the Petitioners were neither named as accused in the F.I.R. nor their name figured as

accused in the charge sheet submitted by the police u/s 173 Code of Criminal Procedure. After the charge sheet was filed, the Chief Judicial Magistrate vide impugned order amalgamated both the cases.

3. Learned Counsel for the Petitioner has contended that since the Petitioners, who were accused in the complaint case, did not figure as accused in the charge sheet submitted by the police, the complaint case could not have been amalgamated with the police case in view of Sub-section (3) of Section 210 Code of Criminal Procedure. In support of this contention learned Counsel relied upon a case reported in *Manikandan Vs. Pandian and Others*, . The Additional Public Prosecutor appearing for the State in all fairness admitted the aforesaid legal proposition.

4. Section 210 Code of Criminal Procedure relates to the procedure to be followed whenever a complaint case is filed in respect to an offence which is subject matter of an investigation in a case registered on a police report. Sub-section (1) of Section 210 lays down that whenever in a complaint case it is made to appear to the Magistrate that in respect to that very offence an investigation is being carried out by the police, thus Magistrate shall stay the proceedings in the complaint case and shall call for the report from the Police Officer conducting the investigation. Sub-section (2) and (3) relate to the procedure to be followed by the Magistrate after receipt of the police report. Sub-sections (2) and (3) of Section 210 Code of Criminal Procedure read as follows:

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.-

(1)...

(2) If a report is made by the investigating police officer u/s 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

Bare perusal of the provisions go to show that in case the accused in both the complaint case and the police case are common then Sub-section (2) will come into play and the Magistrate shall enquire into or try, as the case may be, the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. Further in case the police report does not relate to any accused figuring in the complaint case as is the position in the case in hand, the Magistrate is bound to act under Sub-section (3) and he shall proceed with the enquiry or trial which was stayed by him in the complaint case

in accordance with the provisions of this Code. A combined reading of the aforesaid provisions would go to show that both the cases can be clubbed together for the purpose of enquiry or trial only when the accused in both the cases are common and not otherwise. Since the Petitioners do not figure as accused in the charge sheet filed by the police, the complaint case could not have been amalgamated with the police case.

5. In the result, the petition is allowed and the order under challenge dated 9.4.1992 passed by the Chief Judicial Magistrate, Sitamarhi in Complaint Case No. C1/224/90 is hereby set aside and he is directed to proceed with the complaint in accordance with the provisions contained in Chapter XV of the Code. It is further observed that in case the complaint is committed to the Court of Session, it shall be tried by the same court trying the case committed on police report.

The complainant through his counsel is directed to cause his appearance in the complaint case on 12th May, 1997.