

Ram Niranjan Singh, Vs. the State of Bihar and anr.

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Court : Patna

Decided On : Jul-30-2007

Judge : Md. Mahfooz Alam, J.

Appellant : Ram Niranjan Singh, Anil Kumar Singh @ Anil Kumar, Shambhu Singh and Dinesh Singh

Respondent : The State of Bihar and anr.

Disposition : Application dismissed

Judgement :

Md. Mahfooz Alam, J.

1. This application has been filed for quashing the order dated 12.1.2005 passed in Complaint Case No. 115(c)/2004 arising out of the protest petition filed in Bakhtiyarpur P.S. Case No. 225/99 whereby the learned court below has taken cognizance, under Sections 148, 364(A) of the Indian Penal Code and Section 27 of the Arms Act against the. petitioners.

2. It has been submitted by the learned Counsel of the petitioners that the impugned order is illegal and fit to be set aside in view of the fact that for the same offence Bakhtiyarpur P.S. Case No. 225/99 was instituted in which the police after investigation had submitted final report against the present petitioners but against other accused, the police had submitted charge-sheet on the basis of which the

learned A.C.J.M., Barh had taken cognizance, against the chargesheeted accused and accepted final report against the petitioners vide order dated 16.5.2002. The contention of the learned Advocate of the petitioners is that since the learned A.C.J.M. had already taken cognizance against some of the accused vide order dated 16.5.2002, as such he was not authorised under law to again take cognizance, against the present petitioners on the basis of protest complaint. According to his argument, Section 210 of the Code of Criminal Procedure debars the Magistrate in taking cognizance, in such cases. I think this argument is misconceived on the following grounds:

(1) By order dated 12.1.2005 the learned Magistrate has not passed any fresh order of taking cognizance.

(2) The impugned order shows that the learned Magistrate has simply held that for issuing summons and for putting the petitioners on trial for the offence punishable under Sections 148, 364(A) of the I.P.C. there is sufficient material on record and so he ordered to issue, summons against the petitioners for facing trial.

(3) Admittedly, in police case cognizance was not taken against the petitioners rather final report was accepted against the petitioners, as such the learned Magistrate was duly authorised under law to proceed with the protest complaint as per Section 210 Clause-3 of the Cr.P.C.

(4) There is no provision in law which restricts the Magistrate's power to take cognizance, of the offence against those accused against whom firstly final report was submitted but later on either after re-investigation or during enquiry under Section 201, Cr.P.C. sufficient materials have come on record to come to the conclusion that they might have committed the offence, as alleged.

(5) Section 210 Clause -2 simply says 'that if for one occurrence two cases had been instituted, one police case and another complaint case then both the cases will be tried together as if both the cases were instituted on a police report.

3. On the basis of my above findings, I am of the view that there is no merit in this application and as such, the same is hereby dismissed. However, liberty is given

to the petitioners to move the trial court to amalgamate, both the cases and proceed with the cases as per the provision contained under Section 210 Clause-2 of the Cr.P.C.

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