

Alok Kumar Singh Vs. State of Bihar and ors.

Alok Kumar Singh Vs. State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/136874

Court : Patna

Decided On : Mar-04-2004

Judge : Navin Sinha, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 301; [Arms Act, 1959](#) - Sections 27; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 209 and 323

Appeal No. : Cri Misc. No. 35662 of 2002

Appellant : Alok Kumar Singh

Respondent : State of Bihar and ors.

Advocate for Def. : Markandey Singh and Ramashish Singh, Advs.

Advocate for Pet/Ap. : Abhay Kumar Singh, Adv. No. 1

Judgement :

Navin Sinha, J.

1. The present application has been preferred for quashing the order dated 25.9.2002 passed by the Sessions Judge, Kaimur at Bhabhua in Cr. Rev. No. 34/2002. By the said order the learned Sessions Judge has set aside the order dated 9.4.2002 passed by the Chief Judicial Magistrate, Bhabhua in Tr. No. 756/2001 arising out of case No. 80/96, whereby the learned Chief Judicial Magistrate recorded that in view of the allegations and the evidence, offence under

Section 301, IPC read with Section 27 of the Arms Act was made out against accused Sanjay Singh, opposite party No. 2 herein, and therefore the case be committed to the Court of Sessions for trial.

2. The petitioner filed complaint case No. 232/94 in the Court of learned Chief Judicial Magistrate, Bhabhua alleging that on 28.3.1994 an occurrence took place wherein opposite party No. 2 Sanjay Singh fired at the father of the complainant but for the reason of Ashutosh Singh coming in between, Ashutosh Singh received bullet injury and died. Thereafter the petitioner filed an application under Section 323, Cr PC that as firing was done by Sanjay Singh leading to the death of Ashutosh Singh, offence under Section 307 was made out against the accused persons apart from offence under Section 301 of the Penal Code, which was triable by the Court of Sessions and therefore the case be committed to the Court of Sessions. Thereafter the transferee Magistrate rejected the application on the ground that no offence under Section 307, IPC appears to have been made out and that the post-mortem report was not on record and neither was the evidence of the doctor available with regard to time and manner of death. The petitioner thereafter preferred Cr. Rev. No. 139/98 which was dismissed with a direction that the prosecution must produce the evidence to bring post-mortem report on record before charge and the court below shall give opportunity to the prosecution and thereafter pass a detailed and reasoned order on the point of charge and if he found that a case under Section 302 or 304 or 307, IPC is made out in which event he shall commit the case to the Court of Sessions.

3. Thereafter the petitioner filed a petition before the learned Magistrate that he had filed relevant documents including the post-mortem report etc. and requested for fresh consideration of his contention that the case be committed to the Court of Sessions since a case under Section 301, IPC was made out. Learned Chief Judicial Magistrate by his order dated 5.3.2001 rejected the petition holding that no case under Section 307, IPC was made out as the injury report was simple in nature and that no new material had come forward to make out a case triable under Section 301, IPC. During course of hearing of this application it was also brought on record that the complainant and his family members are accused persons in Mohania PS Case No. 51/94 for which Sessions Trial No. 519/94 is

pending before the Court of Sessions. In that case the allegation against the complainant, petitioner herein, and his family members is to have killed Ashutosh Singh on 28.3.1994. The deceased and the date of occurrence is thus common in both the cases. Aggrieved thereby the petitioner preferred Cr. Rev. No. 42/2001 for commitment to the court of Sessions of complaint case No. 232/94. Learned Sessions Judge by his order dated 10.9.2001 rejected the same. Thereafter the petitioner preferred another application on 19.9.2001 before the Chief Judicial Magistrate who ordered that a case under Section 301, IPC read with Section 27 of the Arms Act was made out against accused Sanjay Singh and posted the case for commitment to the Sessions Court.

4. Opposite party No. 2 then filed Cr. Rev. No. 34/20-02 before the Sessions Judge against the order dated 9.4.2002 passed by the Chief Judicial Magistrate. Learned Sessions Judge set aside the order dated 9.4.2002 holding that it was illegal and improper in view of the order passed in Cr. Rev. No. 42/2001 and that it appeared that the application in question had been filed to escape the rigours of prosecution in Mohania PS Case No. 51/94.

5. Learned counsel for the petitioner contended that since two FIRs with regard to the same offence had been registered it would be in the interest of justice that both cases be tried together and that the complaint case No. 232/94 be also forwarded to the Sessions Court for trial.

6. Learned counsel for the opposite party opposed this prayer of the petitioner and submitted that the order of the learned Chief Judicial Magistrate dated 9.4.2002 holding that the offence under Section 301, IPC read with Section 27 of the Arms Act is made out was illegal. Learned Chief Judicial Magistrate virtually sat in appeal over the order, of the learned Sessions Court passed earlier that no offence under Section 307 etc. was made out and therefore there was no illegality in the order dated 25.9.2002.

7. In my opinion the question whether the order of the learned Chief Judicial Magistrate dated 9.4.2002 is erroneous or not is not relevant or necessary to be considered in view of the reasoning stated hereinafter. If the reasoning of the learned Chief Judicial Magistrate be correct, the case can certainly be committed

to the Court of Sessions and both the cases i.e. complaint case No. 232/94 and Mohania PS Case No. 51/94 can then be tried together. It is well settled by the decision of the Supreme Court that where there is a case and counter case or there are two cases with regard to the same occurrence it is in the interest of justice that both cases be tried together. The difficulty arises when one of the cases is triable exclusively by Sessions and the second case or counter case is triable by a Magistrate. This would be the position in the present case if it is held that the order of the revisional court dated 25.9.2002 in Cr. Rev. No. 34/2002 be correct. In that event complaint case No. 232/94 would be triable by a Magistrate. This question was considered by the Supreme Court in the case of Sudhir and others v. State of M.P., reported in (2001) 2 SCC 688. Their Lordships at para 12 of the judgment have considered that in a situation where one of the two cases (relating to the same incident) is charge-sheeted or complained of, involves offences or offence exclusively triable by a Court of Session, but none of the offences involved in the other case is exclusively triable by a court of session, the Magistrate has no escape from committing the former case to the Sessions Court as provided in Section 209, Cr PC. Though the next case cannot be committed in accordance with Section 209 of the Code the Magistrate has, nevertheless, power to commit the case to the Court of Sessions, albeit none of the offence involved therein is exclusively triable by the Sessions Court Section 323 is incorporated in the Code to meet similar cases also. The section reads thus :--

'323. If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made.'

8. When a Magistrate has committed a case on account of his legislative competence its cross-case, having no offence exclusively triable by the Sessions Court must be tried by the same Court of Sessions. The reason for a common trial have been repeatedly emphasised by the judicial pronouncements and need no reiteration. Hence the Magistrate can exercise special power conferred on him by virtue of Section 323 of the Code when he commits the cross-case also to the

Court of Sessions. The sources of commitment therefore is two-fold under Section 209 and 323 but once they are committed they flow in a common stream.

9. In the aforesaid facts and circumstances, in my considered opinion. The present case does not call for any interference at this stage. In view of the law laid down by the Supreme Court, as aforesaid, it would be in the interest of justice that both the cases be tried together, before the same Court. This Court therefore directs accordingly. The Court to which both the cases be committed shall proceed in accordance with law without being fettered by the order dated 25.9.2002 in Cr. Rev. No. 34/2002.

10. The application is therefore allowed to the extent indicated above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com