

Birendra Prasad Singh and anr. Vs. State of Bihar and anr.

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Court : Patna

Decided On : Mar-03-2008

Judge : Anwar Ahmad, J.

Appellant : Birendra Prasad Singh and anr.

Respondent : State of Bihar and anr.

Disposition : Application dismissed

Judgement :

Anwar Ahmad, J.

1. This is an application filed on behalf of accused Birendra Pd Singh and Sunil Kumar Singh under Section 482 of the Code of Criminal Procedure for quashing the order dated 31st March, 2007 passed by the Sessions Judge, Vaishali in Criminal Revision No. 37 of 2007 remitting back the matter to the Chief Judicial Magistrate for passing order of cognizance afresh and also for quashing the order dated 17th September, 2007 passed by the Chief Judicial Magistrate, Vaishali subsequent upon the direction of the revisional court in Tisiauta P S Case No. 49 of 2005 taking cognizance of the offence under Sections 323, 341, 324 and 307/34 of the Indian Penal Code, against the petitioners.

2. Lalan Kumar Singh lodged first information report for the offence under Sections 341, 323, 324, 307/34 of the Indian Penal Code, against four persons including the

petitioners alleging therein that in the evening he went in the back side of his house where he saw Birendra Pd Singh, Sudhir Kumar Singh, Sunil Kumar Singh and Sanjay Kumar Singh alias Pappu cutting the ridge of his field with a spade. He protested. Thereupon, Sudhir Kumar Singh assaulted him with a spade causing cut injury on his nose. It is further alleged that his father Shyam Sunder Singh was also assaulted and as a result he sustained bleeding injury on his head. After investigation charge sheet was submitted against two accused Sudhir Kumar Singh and Sanjay Kumar Singh alias Pappu showing the petitioners Birendra Pd Singh and Sunil Kumar Singh in 'not sent up' column. Learned Chief Judicial Magistrate accordingly took cognizance of the offence against Sudhir Kumar Singh and Sanjay Kumar Singh and discharged the petitioners Birendra Pd Singh and Sunil Kumar Singh. Against that order the informant filed a revision in the court of Sessions Judge who under the impugned order dated 31.3.2007 remitted back the matter to the Chief Judicial Magistrate to pass order afresh in accordance with law after perusing the entire records and the case diary. Acting upon the direction of the Sessions Judge in the revision, the Chief Judicial Magistrate appears to have considered the matter afresh and found sufficient material/prima facie case against the petitioners and hence, he took cognizance of the offence against them also under the impugned order dated 17th September, 2006. Thereafter, the petitioners have come up before this Court for quashing the order of revisional court and also the order of the Chief Judicial Magistrate passed after the direction in the revision.

3. Learned lawyer for the petitioners submits that after investigation chargesheet was submitted against two accused persons showing the petitioners in 'not sent up' column and rightly Chief Judicial Magistrate took cognizance of the offence against two accused persons who were charge-sheeted and discharged the petitioners against whom final report was submitted. He submits that the only remedy in such a situation is course of trial. He submits that in case evidence is collected against the petitioners in the trial, the petitioners might be summoned to face trial under Section 319 of the Code of Criminal Procedure and not otherwise. He submits that the direction of the revisional court to the Chief Judicial Magistrate to consider the matter afresh was not in accordance with law. He submits that acting upon the direction in the revision, the Chief Judicial Magistrate who had earlier discharged the petitioners, took cognizance of the offence on the same

material but he was not competent to take cognizance of the offence against the accused persons who have not been charge-sheeted. He, therefore, submits that the impugned orders be quashed. In support of his contention he referred to a decision of this Court in the case of Ram Nandan Singh alias Ram Nandan Yadav v. State of Bihar and Anr. reported in 2007 (2) PLJR 825. His Lordship relying on the decision in the case of Ranjit Singh v. State of Punjab reported in : 1998 CriLJ4618 held that a Magistrate can not issue process against a person who has not been charge-sheeted and such a person can be arrayed as an accused in exercise of powers only under Section 319 of the Code of Criminal Procedure when some evidence or materials are brought on record in course of trial.

4. A Learned lawyer appearing on behalf of the informant submits that in the case Dharam Pal and Ors. v. State of Harayana and Anr. reported in (2004) 13 Supreme Court Cases 9, his Lordships held 'Prima facie, we do not think that the interpretation reached in Ranjit Singh case is correct. In our view, the law was correctly enunciated in Kishun Singh case. Since the decision in Ranjit Singh case is of three-Judge Bench, we direct that the matter may be placed before the Hon'ble the Chief Justice for placing the same before a larger Bench.' Learned lawyer further submits that this Court in the case of Tileshwari Devi and Ors. v. The State of Bihar and Anr. reported in 2005 (4) PLJR 720, held that 'for the reasons stated above, I do not have slightest doubt in mind that the learned Magistrate while exercising its power under Section 190 of the Code is not bound by the conclusion arrived at by the officer incharge of the police station in a case exclusively triable by Court of Sessions while submitting the report under Section 173 of the Code and in a case in which the materials collected during the course of investigation and forming part of the report under Section 173 Cr.P.C., prima facie, suggest complicity of the accused persons in the crime although named in the FIR but not charge-sheeted, still the Magistrate can differ with the conclusion and take cognizance of the offence. The Magistrate has such power under Section 190 of the Code. I hasten to add that although the police is master of investigation but what treatment has to be given to the report is in the domain of the Magistrate.' Learned lawyer further submits that similar view has been taken by this Court in the case of Meena Kumari alias Meena Devi v. The State of Bihar, reported in 2005 (2) PCCR 97. So, the learned lawyer submits that the miscellaneous case be

dismissed.

5. Considering the rival submissions made, I am of the view that the impugned order is quite good and inherent jurisdiction is not required to be invoked.

In the result, the miscellaneous case is dismissed.

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