

Md.izhar, and ors. Vs. State of Bihar.

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Court : Patna

Decided On : Sep-14-2010

Judge : Akhilesh Chandra, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC) - Sections 302 read with 34; Arms Act - Section 27

Appeal No. : CRIMINAL MISCELLANIOUS No.8514 OF 2005

Appellant : Md.izhar, and ors.

Respondent : State of Bihar.

Judgement :

1. Heard learned Additional Public Prosecutor for the State. None appeared on behalf of the petitioners, perused record as well as report received from the court below through Letter No. 19 dated 30th August, 2010 and the supplementary case diary.

2. This application has been preferred by four petitioners under Section 482 of the Code of Criminal Procedure, seeking quashing of order dated 28.10.2003 passed by Chief Judicial Magistrate, Saharsa taking cognizance for the offences under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act against seven accused persons, including four petitioners in Bakhtiyarpur Police Station Case No. 81 of 2003 and traveling the record to the court of Sri Azazuddin, Judicial Magistrate, 1st Class, Saharsa for commitment .

3. Relevant facts of this case is that Bakhtiyarpur Police Station Case No. 81 of 2003 was instituted on 18.07.2003 for the offences under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act, on the fardbeyan of one Sahni Khatoon against seven persons including the four petitioners. After investigation police submitted charge-sheet against three non- petitioners, keeping the investigation pending against four petitioners vide charge-sheet no. 107 dated 13.10.2003.

4. On receipt of the charge-sheet, learned Chief Judicial Magistrate on going through the materials took cognizance for the offences not only against the three persons against whom charge-sheet was submitted, but against the four petitioners also against whom the police kept the investigation pending.

5. The main grievance against the impugned order as appears from the application was that the court below without taking care of pendency of investigation against the petitioners took cognizance in the case against all the seven persons including the petitioners.

6. As it appears from the record of this case that vide order dated 16.05.2006, admitting the application for hearing, police was directed to proceed with the supplementary investigation, so far as the petitioners are concerned.

7. Subsequently, when matter was taken for hearing on 18.08.2010 none was in a position to state actual state of affairs as regard to the stage or outcome of investigation with respect to the petitioners, accordingly a report was called for from the court below.

8. The court below has submitted its report vide Letter No. 19 dated 30th August, 2010 along with supplementary case diary clearly indicating that police has not only concluded the investigation by 16.07.2009, but also submitted supplementary charge-sheet against the petitioners for the offences under Sections 302/34 of the Indian Penal Code and 27 of the Arms Act.

9. In view of the above ultimately there appears no room for any interference in the proceeding before the court below or any order in connection thereof. Thus this

application stands disposed of.

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