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Court : Patna

Decided On : Jan-31-2011

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 210, 197; Indian Penal Code (IPC) - Sections 147, 148, 149, 302, 307, 353, 384, 386, 387, 332, 333, 324, 216 A, 34; Arms Act - Section 27

Appeal No. : CRIMINAL MISCELLANEOUS No.28816 OF 1999

Appellant : Dineshwar Kumar, and anr.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mrs.Renu Kumari, Adv.

Advocate for Pet/Ap. : Mr. S.K. Giri, Adv.

Judgement :

1. Two aforesaid petitioners, who are police official, have approached this Court, while invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure with a prayer to quash the order dated 25.2.1999 passed by the Sub Divisional Judicial Magistrate, Gopalganj in Complaint Case No.1878 of 1998, whereby the learned Magistrate took cognizance of offence under Sections 147, 148, 149, 302 and 307 of the Indian Penal Code and Section 27 of the Arms Act and directed for summoning all the accused persons including petitioners.

2. Short fact of the case is that on 29.10.1998, a complaint was filed by opposite party no.2 in the court of Chief Judicial Magistrate, Gopalganj vide Complaint Case No.1878 of 1998 arraying the petitioner no.2 as Accused No.1, one Home Guard Jawan and 18 other Daroga and Constables for an occurrence, which had taken place on the same day i.e. 29.10.1998 at about 7.30 A.M.(morning). The complaint was filed on allegation of committing offence under Sections 147, 148, 149, 302 and 307 of the Indian Penal Code and 27 of the Arms Act. It was disclosed in the complaint petition that complainant was cousin brother of one Madhusudan Singh, who was not in a position, due to shock of death of his son, to make complaint and as such he had filed the complaint. It was disclosed by the complainant that on the date and time of the occurrence, all the accused persons came to the house of Madhusudan Singh and Accused No.1 (petitioner no.2) along with some Constables entered into the Varandah and other Constables and Daroga surrounded the house. Thereafter, the petitioner no.2 told that some persons had came there after committing crime. Whereupon Krishna Prasad Singh @ Anshu, who was sitting in a room told that no one had came there. In the meanwhile, the Accused No.1 (Petitioner no.2) from his service revolver fired on Anshu whereby he fell down and died. The Accused No.1(Petitioner no.2) after coming to know that the said boy was studying at Allahabad and after completing examination of B.A. final, he had come to his house, the Accused No.1 fired on leg of one Home Guard whereby the Home Guard Jawan received injury. Subsequently, they carried the Jawan and dead body to Hathua Hospital and from there, they came to Gopalganj Police Station, Via Mirganj Police Station and had kept the dead body there on the pretext of getting the postmortem done. It was also alleged that one Yogendra Singh was threatened and thereafter from him on blank papers, signatures and identification was taken. It was also alleged that Accused No.1 (Petitioner no.2) had un-authorizedly detained father of the deceased. After filing the complaint, the complainant was examined on S.A. and thereafter, in support of the complaint, altogether 11 witnesses were examined. During the enquiry, certain documents were also produced and thereafter, the learned Magistrate, after examining all the materials being fully satisfied that prima facie case of brutal murder of deceased Krishna Prasad Singh @ Anshu was made out against the petitioner no.2, who was, at the relevant time, Officer-in-Charge of Mirganj Police

Station, (2) Anmol Yadav, Officer-in-Charge of Uchkagaon Police Station, (3) Dineshwar Kumar, A.S.I. of Mirganj Police Station and other accused whose name had not been furnished by the complainant, who had assisted the murder by showing police powers acting without jurisdiction and as such cognizance for the offence under Sections 147, 148, 149 and 302 of the Indian Penal Code was taken against the accused persons including the petitioners and direction was issued for issuance of processes against the accused persons.

3. Aggrieved with the order of cognizance, the aforesaid petitioners approached this Court by filing the present petition. It was filed on 10.11.1999 and on 17.2.2000, the case was admitted for hearing, notice was directed to be issued to opposite party no.2, Lower Court Records were called for and pending disposal of this application, it was directed that further proceeding in Complaint Case No.1878 of 1998 shall remain stayed. The order of stay is still continuing.

4. Shri S.K. Giri, learned counsel for the petitioner, has raised several grounds assailing the impugned order of cognizance. It was submitted that it was not a case of murder, but the police, while searching a veteran criminal, who had just committed the offence prior to the occurrence in the present case, had gone to the house of the father of the deceased and while police party arrived near his house about six accused persons, who were sitting on Varandah immediately entered into the house and locked the door from inside and thereafter, from window and ventilator, they started indiscriminate firing to police party. In self defence, police also fired. After the firing was stopped, the police any how entered into the house. However, most of the accused persons managed to flee away and while police reached inside the house, dead body of son of the informant was found in a room. Shri Giri submits that for the said occurrence, police had lodged an F.I.R. vide Phulwaria P.S. Case No.54 of 1998 registered under Sections 307, 353, 332, 333, 324, 216 A and 34 of the Indian Penal Code as well as Section 27 of the Arms Act against five accused persons. Learned counsel has referred to Annexure-4 to the petition, which is a typed copy of the F.I.R. of Phulwaria P.S. Case No.54 of 1998. Learned counsel for the petitioners has also referred to Annexure-3 to the petition, which is a typed copy of F.I.R. of Mirganj P.S. Case No.188 of 1998 registered under Sections 384, 386, 387 and 34 of the Indian Penal Code against one Guddu

Rai and other four accused persons.

5. It was submitted by Shri Giri that in the early morning, an occurrence had taken place in which a dreaded criminal, namely, Guddu Rai at about 6.30 A.M.(morning) on 29.10.1998 along with other two accused persons armed with rifle and gun had looted one Suraj Prasad and fled away. On the information of Suraj Prasad, an F.I.R. as Mirganj P.S. Case No.188 of 1998 was registered on 29.10.1998 at 7.15 A.M.(morning). After registering the F.I.R., police started to search the accused persons and they got information that accused persons had gone towards the village of deceased and while police arrived there and encounter took place in which son of Madhusudan Singh succumbed to the fire arm injury and one Home Guard Jawan received fire arm injury and as such an F.I.R. vide Phulwaria P.S. Case No.54 of 1998 was registered. On the aforesaid facts, it has been emphasized that it was not a murder, but the police, while discharging their official duty in self defence, had fired and in an encounter death had taken place. Learned counsel for the petitioners submits that occurrence had taken place, while petitioners being police officers were discharging their official duty and as such the learned Magistrate has committed serious error in passing the order of cognizance even against the petitioners in absence of any prosecution sanction issued by the competent authority. In absence of prosecution sanction, it was submitted that the order of cognizance is liable to be set aside.

6. Shri S.K. Giri has further argued that the learned Magistrate was well knowing that for the same occurrence in which son of Madhusudan Singh was killed and a Jawan was also injured, police had registered a case and investigating the same and as such under the provisions contained in Section 210 of the Code of Criminal Procedure, the learned Magistrate was required to stay the enquiry during the investigation of the police case i.e. Phulwaria P.S. Case No.54 of 1998. On aforesaid grounds, it has been argued that the order of cognizance is not sustainable in the eye of law and same is liable to be set aside.

7. Smt. Renu Kumari, learned Additional Public Prosecutor appearing on behalf of the State, has strongly opposed the prayer of the petitioner. It was submitted that it was a case of brutal murder of a young student, who after appearing in B.A.

examination from Allahabad University during vacation, had come to his native place and in a brutal manner, he was killed by the accused persons particularly petitioner no.2, namely, Jaffer Jawed, who was at the relevant time Officer-in-Charge of the Mirganj Police Station. It was submitted that at no stretch of imagination for such an occurrence, it can be said that petitioners' act was in relation to discharge of official duty. Accordingly, it was submitted that in the facts and circumstances of the present case, there was no requirement for obtaining sanction for prosecuting the petitioners and as such the learned Magistrate has rightly passed the impugned order.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. In this case, by an order of this Court, Lower Court Record was called for, which has been received and are lying with the record of the present case. I have minutely examined the same.

9. Of course, defence taken by the petitioner before this Court is not at all required to be either entertained or examined that too while hearing a petition under Section 482 of the Code of Criminal Procedure in a case where order of cognizance was only passed, but with a view to come to just decision in the matter, I was persuaded to examine the entire record to ascertain as to whether the defence taken by the petitioners has got any substance or not. While examining the Lower Court Record, I have come across with an order passed by this Court in Cr. Misc. No.5266 of 1999 dated 18.11.1999, whereby the application filed by co-accused Anmol Kumar (Anmol Yadav), who was Officer-in-Charge of Uchkagaon Police Station against the order of cognizance was dismissed.

10. In the present case, as per complainant, occurrence had taken place at about 7.30 A.M. (morning) on 29.10.1998. Shri Giri, learned counsel for the petitioners, had taken the plea that the police party had arrived in search of a dreaded criminal, namely, Guddu Rai, who had committed an offence of loot on the same day at about 6.30 A.M.(morning). A typed copy of the F.I.R., which has been brought on record vide Annexure-3 to the petition i.e. Mirganj P.S. Case No.188 of 1998 makes it clear that after the occurrence in Mirganj P.s. Case No.188 of 1998, which had taken place at 6.30 A.M. (morning), the informant of the said case had

submitted a written application before the Officer-in-Charge of Uchkagaon Police Station. From page-28 of the brief, it is evident that said written application of informant of Mirganj P.S. Case No.188 of 1998 was forwarded by Officer-in-Charge of Uchkagaon Police Station on the same day to the Officer-in-Charge of Mirganj Police Station since the place of occurrence was within the jurisdiction of Mirganj Police Station. Meaning thereby that the Officer-in-Charge of the Mirganj Police Station i.e. petitioner no.2 had received information regarding the occurrence after the written application of the informant was forwarded to him by the Officer-in-Charge of the Uchkagaon Police Station. On perusal of the copy of the F.I.R. of Phulwaria P.S. Case No.54 of 1998 (Annexure-4 to the petition), it appears that the petitioner no.2, on his self statement, had recorded the said F.I.R. i.e. Phulwaria P.S. Case No.54 of 1998 wherein he had disclosed the time of occurrence at about 8.30 A.M. (morning) on the same date. His self statement was recorded at 9.30 A.M. (morning) at the door of Madhusudan Rai of village Gosai Majha Phulwaria, Gopalganj. In the said F.I.R., informant (petitioner no.2) has stated that while they reached at about 8.30 A.M. (morning) near the house of Madhusudan Rai, father of the deceased, he noticed that 6 to 7 accused persons armed with rifle and gun and bearing belt of bullet were sitting at the door of Madhusudan Rai out of whom the informant and other police official identified dreaded criminal Guddu Rai, Nanhe Rai and Ajay Rai. After noticing the arrival of the police, they entered into the northern room from the Varandah and locked the door from inside and thereafter, from window and ventilator, they started indiscriminate firing. Thereafter, in self defence, police also fired. In the said occurrence, one Home Guard received serious injury by fire arm. For about 20 minutes, there was indiscriminate firing. In the meanwhile, the police party through gallery entered into the courtyard (Aangan). In the meanwhile, accused persons opened the door of the room and started firing while fleeing away. After the firing was stopped, they entered into the house where they found the dead body of one of the accused. The informant has claimed that he had seen the deceased at the time of occurrence. He had identified him while he was firing from the window. The F.I.R. further disclosed that number of firing was made by all the police officials. However, in the F.I.R. itself, the informant has shown that no fired cartridge, which was shown to be fired from different police rifles, were not recovered nor any

seizure list was prepared for such fired cartridges. However, it was shown that number of fire cartridges were found inside the room. The quick action in the present case on the basis of the occurrence i.e. occurrence of Mirganj P.S. Case No.188 of 1998, which had taken place at 6.30 A.M. (morning), for which the informant of the said case had submitted a written application before the Uchkagaon Police Station creates serious doubt in the mind of the court. Of course, the court is not recording finding on this issue, but prima facie, it appears that everything was created subsequent to the murder of the son of Madhusudan Rai. In respect of Madhusudan Rai, from the record, it appears that some information was gathered that he was in the habit of harbouring criminals, but in the present case, facts remains that student of Allahabad University, while he had come to his native place during the pooja vacation was done to death by the police official particularly the petitioner no.2, which has come during the enquiry of the complaint case.

11. Another point for strengthening the belief on the facts of the complaint case is that the death of son of Madhusudan Rai had taken place on 29.10.1998 in the morning at 7.30 A.M. and on the same date; the complaint was filed in the court of Chief Judicial Magistrate, which is evident from the Lower Court Record. The prompt action taken by the complainant creates no doubt on the genuineness of the allegation. In this case, during enquiry, altogether 11 witnesses were examined which include younger and minor sister of the deceased boy, who have also supported the prosecution case. Besides this, on perusal of the record, it transpires that on the prayer made on behalf of the complainant, postmortem report was also summoned and copy of the same was brought on record, which shows that death had occurred due to the reason that the deceased had received fire arm injury on his chest. Many other materials were also brought on record during the enquiry and the learned Magistrate, by assigning a detailed reason, has passed the impugned order of cognizance. So far as application of prosecution sanction is concerned, on the facts and circumstances, I am of the opinion that at the moment, it cannot be considered that act alleged was squarely in relation to discharge of official duty. Moreover, whether an act was in relation to discharge of official duty was there or not can well be seen during the trial and not at this stage. So far as application of Section 197 of the Code of Criminal Procedure is

concerned, this protection has been granted to an officer, who is removable only by the State Government or by the Central Government. At the moment, it cannot be conclusively said that both the petitioners were removable by the State Government. So far as application of Section 210 of the Code of Criminal Procedure is concerned, said plea was not taken before the court below. Immediately after the order of cognizance, the two petitioners had rushed to the court and also got an order of stay which continued for more than ten years.

12. In view of the facts and circumstances, I am of the opinion that the learned Magistrate, while passing the impugned order, has not committed any error, rather this Court is of the opinion that the learned Magistrate has passed a very reasoned and sound order which requires no interference by this Court.

13. Accordingly, the petition stands rejected.

14. In view of rejection of this petition, interim order of stay dated 17.2.2000 stands automatically vacated.

15. Office is directed to remit back the Lower Court Record along with a copy of this order. Since the matter had remained un-necessarily pending before this court for quite a long time, it is expected that the learned court below will proceed with the case expeditiously so that the case may come to its logical end without any further delay.

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