

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRL.) No.5123 of 2009

UMA SHANKAR SINGH ... PETITIONER

Vs.

STATE OF BIHAR & ANR.

... RESPONDENTS

J U D G M E N T

ALTAMAS KABIR, J.

1. On 17th February, 2000, one Vijay Singh, brother of Bharat Singh (deceased) and Damodar Singh, who was an independent candidate in the elections to the Bihar Assembly, lodged a First Information Report

with Maharajganj Police Station which was recorded as Maharajganj P.S. Case No.14 of 2000. In the said F.I.R. it was indicated that Damodar Singh, the informant's brother was contesting the elections to the Bihar Assembly as an independent candidate. While the polling of votes was in progress, Bharat Singh was sitting in the Election office when he received information that bogus votes were being cast at a particular booth and upon hearing a bomb explosion at about 11.30 a.m., he proceeded to the place where the incident was taking place. According to the F.I.R. version, the informant reached the place in a jeep while Bharat Singh followed him on a motorcycle. On reaching the place they were informed that a boy had sustained injuries and had been rushed to the Maharajganj State Hospital for treatment.

2. When they were leaving the hospital premises, Uma Shankar Singh who was a candidate of the Samata Party in the Assembly election, and his son Jitendra Swami, accompanied by some unknown persons armed with different weapons, arrived at the place of occurrence and on the orders of Uma Shankar Singh, his son Jitendra Swami pulled down Bharat Singh from his motorcycle, pushed him into his car and drove out to an unknown destination.
3. Initially, the FIR was lodged under Section 364/34 IPC, but after the body of Bharat Singh was found, Sections 302, 291/34 IPC and Section 27 of the Arms Act were also added. The matter created a lot of turmoil which resulted in the investigation being transferred to the CID. The informant, Vijay Singh, becoming unnerved by the said decision of the State Government, challenged the same in CrI. W.J.C. No.288 of 2000, which was

disposed of by the High Court on 9th April, 2001, upon observing that the matter appeared to be a fight between two political personalities and when investigation had already been completed by one agency and was also to be completed by the CID, the question would arise as to whether the investigation report under Section 173(2) Cr.P.C. would have to be filed both by the first investigating agency and also by the CID. The High Court directed the CID and the Superintendent of Police, Siwan, to submit their reports to the concerned Chief Judicial Magistrate within two months from the date of the order and upon such report being submitted, the Chief Judicial Magistrate was directed to proceed according to law after considering both the reports and the case diary.

4. By virtue of the order of the High Court, investigation continued both by the CID and the local police and it was decided to file a report in final form against the Petitioner, though some other accused were charge-sheeted. However, after examining the materials in the case diary, the Chief Judicial Magistrate differed with the Final Report submitted by the investigating agency to take cognizance against Jitendra Swami and some other accused persons.

5. This led the Petitioner to file an application under Section 227 Cr.P.C. for discharge from the case. The said application was taken up for consideration by the First Additional Sessions Judge, Siwan, who by his order dated 9th March, 2007, rejected the petitioner's prayer for discharge under Section 227 Cr.P.C. and fixed a date for framing of charge.

6. The Petitioner thereupon filed Crl. Misc. Case No.18909 of 2007 in the Patna High Court for quashing the order passed by the First Additional District and Sessions Judge, Siwan, on 9th March, 2007, rejecting the Petitioner's prayer for discharge from the case. The High Court dismissed the Crl. Misc. Case vide its order dated 12th May, 2009. This Special Leave Petition was filed on 17th July, 2009, against the said judgment and order of the High Court.

7. On behalf of the Petitioner it was urged that when he was not named as an accused in the charge-sheet filed by the investigating agency, the Magistrate could not have taken cognizance as far as he was concerned and the trial court should have waited till the stage of Section 319 Cr.P.C. if at all the Petitioner was to be arrayed as an accused. Mr. P.S. Mishra, learned Senior Advocate, reiterated the oft-repeated saying that cognizance is taken of an offence and

not the offender. Mr. Mishra submitted that the case was also investigated by the C.I.D. on the directions of the High Court and, although, the alleged offence was triable by a Court of Session, the learned Magistrate erroneously took cognizance thereof.

8. Mr. Mishra urged that one of the modes of taking cognizance of an offence by the Magistrate under Section 190 Cr.P.C. is upon a police report of facts constituting the offence. Mr. Mishra submitted that prior to the enactment of the Code of Criminal Procedure, 1973, which replaced the Code of Criminal Procedure, 1898, if the Magistrate disagreed with the Final Report filed by the investigating agency, he was at liberty to hold a separate enquiry and to take cognizance thereafter. Under the new Code, however, such a procedure was eliminated by virtue of the amended provisions of Section 209 which made it quite clear that when in a case instituted on a

police report or otherwise, the accused appears or is brought before the Magistrate who is of the view that the offence is triable exclusively by the Court of Session, he shall, after complying with the provisions of Sections 207 and 208, as the case may be, commit the accused to the Court of Session. It was urged that the Magistrate was left with no choice to hold an enquiry but to make an order of commitment when the facts disclosed an offence triable by the Court of Session. In other words, if the Final Report under Section 173(2) Cr.P.C. exonerated an accused, there was no scope for the Magistrate to hold an inquiry for the purpose of taking cognizance, but to wait for the stage of Section 319 Cr.P.C. if at all cognizance was to be taken in respect of such accused on material that may have surfaced during the trial.

9. In support of the said proposition reliance was placed on the decision of this Court in Raj

Kishore Prasad vs. State of Bihar [(1996) 4 SCC 495], wherein this Court when confronted with a similar question held that in order to apply Section 319 Cr.P.C. against any person other than the accused, it would depend on the evidence recorded in the course of any inquiry or trial and that proceedings before a Magistrate under Section 209 Cr.P.C. are not trial proceedings nor were they ever meant to be.

10. Reference was then made to a decision of a Three Judge Bench of this Court in Ranjit Singh vs. State of Punjab [(1998) 7 SCC 149], wherein the Hon'ble Judges took the view that when a case is committed to the Court of Session under Section 209, the Court of Session has no jurisdiction to include a new person as accused before evidence was led on behalf of the prosecution and that there was no power other than the power conferred under Section 319 Cr.P.C. by which the Court of Session could join a new person as accused. It was held that there

is no intermediary stage between committal under Section 209 Cr.P.C. and Section 319 Cr.P.C. for the aforesaid purpose.

11. Mr. Mishra submitted that the views expressed in Ranjit Singh's case (supra) were contrary to those expressed by this Court in the case of Kishun Singh & Ors. vs. State of Bihar, [(1993) 2 SCC 16], where, although, 20 persons had been named in the F.I.R., the Magistrate had committed 18 to the Court of Session under Section 209 Cr.P.C. to stand trial. On an application made under Section 319 Cr.P.C. indicating the involvement of the other two accused as well, a prayer was made that they should also be summoned and arraigned before the court as accused persons along with the 18 other accused already named in the charge-sheet. Despite objections raised on behalf of the said two persons, the Sessions Judge, in exercise of his discretion, added the said persons as accused along with the 18 others.

The criminal revision preferred from the order of the learned Sessions Judge was dismissed by the High Court. This Court while granting special leave held that although the stage of Section 319 had not been reached, on the materials available, the Sessions Judge was within his jurisdiction in taking cognizance against the said two persons under Section 193 of the Code.

12. The same question once again fell for consideration in Kishori Singh & Ors. vs. State of Bihar & Anr. [(2004 (13) SCC 11)], where the decision rendered by this Court in Ranjit Singh's case (supra) was followed, although, another decision in the case of India Carat Pvt. Ltd. vs. State of Karnataka & Anr. [(1989) 2 SCC 132], was also cited wherein another Bench of three Judges of this Court had held that despite the police report that no case had been made out against the accused, the Magistrate can take cognizance of the offence under Section 190(1)(b), taking into

account the statement of witnesses made under police investigation and issue process.

13. Ultimately, the case of Dharampal & Ors. vs. State of Haryana & Anr. [(2004) 13 SCC 9], came up for consideration before a Bench of two Judges when on account of the different views expressed by different Benches of this Court, the case was directed to be heard by a three Judge Bench. After considering the various decisions in connection with the said issue, the three Judge Bench observed that *prima facie* it did not think that the interpretation reached in Ranjit Singh's case (supra) was correct and that the law was clearly enunciated in Kishun Singh's case (supra). Further, having regard to the fact that the decision in Ranjit Singh's case (supra) was a three-Judge Bench, the learned Judges directed that the matter be placed before the Hon'ble the Chief Justice of India for placing the matter before a larger Bench.

14. Mr. Nagendra Rai, learned Senior Advocate appearing for some of the respondents, on the other hand, submitted that the question referred to the larger Bench in Dharampal's case (supra) is not really material for a decision in this case where the fact situation was different. Mr. Rai urged that the law was well-settled that the Magistrate was not bound to accept the Final Report filed by the investigating authorities under Section 173(2) Cr. P.C. and was entitled to issue process against an accused even though exonerated by the said authorities, without holding any separate enquiry, on the basis of the Police Report itself.

15. There is substance in Mr. Rai's submission that for a decision in the facts of the case, it is not necessary to wait for the outcome of the result of the reference made to a larger Bench in Dharampal's case. The reference is with regard to the Magistrate's power of enquiry if he

disagreed with the Final Report submitted by the investigating authorities. The facts of this case are different and are covered by the decision of this Court in the case of India Carat Pvt. Ltd. (supra) following the line of cases from Abhinandan Jha vs. Dinesh Mishra (1967) 3 SCR 668 onwards. The law is well-settled that even if the investigating authority is of the view that no case has been made out against an accused, the Magistrate can apply his mind independently to the materials contained in the police report and take cognizance thereupon in exercise of his powers under Section 190(1)(b) Cr.P.C.

16. That is precisely what has happened in the present case. In the instant case the investigation had been handed over to the C.I.D. and both the C.I.D. and the local police had submitted their reports in final form exonerating the petitioner of the allegations made against him in the F.I.R. However, the Chief Judicial

Magistrate, Siwan, took cognizance of the offence under Section 302/379 IPC and Section 27 of the Arms Act against the petitioner. This is not a case where the Magistrate took recourse to any further inquiry but took cognizance on the police report itself, which he was entitled to do under Section 190(1)(b) Cr.P.C.

17. Even otherwise, the Petitioner thereafter filed an application for discharge before the 1st Additional District and Sessions Judge, Siwan, in Sessions Trial No.281 of 2006, but such prayer under Section 227 Cr.P.C. was dismissed and a date was fixed for framing of charge. We have been informed that charges have since been framed against the petitioner which has rendered the present proceedings infructuous and the Petitioner's remedy, if any, will no longer be available therein.

18. The Special Leave Petition is, therefore, dismissed in the light of the aforesaid observations.

.....J.
(ALTAMAS KABIR)

.....J.
(A.K. PATNAIK)

New Delhi
Dated: 09.09.2010.