
Vinay Shankar Ram Vs State Of Bihar And Ors

Criminal Miscellaneous No. 31556 Of 2016

Court: Patna High Court

Date of Decision: Jan. 16, 2018

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 173, 173(2), 193, 209, 482#Indian Penal Code, 1860 " Section 34, 307, 323, 324, 341, 504#Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 " Section 2(bd), 2(d), 3(1)(x), 14, 14(1)

Citation: (2018) 2 PLJR 761

Hon'ble Judges: Ashwani Kumar Singh, J

Bench: Single Bench

Advocate: Ajay Kumar Singh, Satyendra Narayan Singh

Final Decision: Allowed

Judgement

1. This application under Section 482 of the Code of Criminal Procedure (for short "Cr. P.C.") has been filed by the petitioner for quashing the

order dated 10.05.2016 passed by the learned Chief Judicial Magistrate, Bettiah in Shikarpur P.S. Case No.444 of 2015 by which he has taken

cognizance of the offences punishable under Sections 341, 323, 324, 504 read with 34 of the Indian Penal Code and Section 3(1)(x) of the Scheduled

Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act") and summoned the opposite parties no.2 to 4 to face

trial.

2. The petitioner being the informant of the aforesaid Shikarpur P.S. Case No.444 of 2015 has challenged the impugned order raising contention that

though there is overwhelming materials available on record making out an offence punishable under Section 307 of the Indian Penal Code, the learned

Magistrate did not take cognizance of the offence punishable under Section 307 of the Indian Penal Code. Learned counsel for the petitioner

submitted that as the police did not conduct investigation in an impartial manner and fair manner and deliberately submitted its report under Section

173(2) of the Cr. P.C. only under Sections 341, 323, 324, 504 read with 34 of the Indian Penal Code and Section 3(1)(x) of the Act of 1989, the

learned Chief Judicial Magistrate without application of judicial mind mechanically took cognizance of the offences only under the provisions of the

penal law for which chargesheet was submitted. He submitted that it was incumbent upon the learned Chief Judicial Magistrate to have looked into

the materials available on record including the injury report of the doctor of the emergency ward of N.M.C.H. before passing the order of cognizance

and summoning the accused opposite parties.

3. On the other hand, learned counsel for the State contested the matter. He submitted that the investigation was carried out in a fair and impartial

manner and, as in course of investigation, it transpired that the injuries were caused not with intention to kill the informant, the Investigating Officer

rightly did not submit police report under Section 307 of the Indian Penal Code. He submitted that the submission made by the petitioner that the order

passed by the learned Chief Judicial Magistrate is mechanical has got no substance as the learned Chief Judicial Magistrate has applied his judicial

mind to facts available on record and has passed a just and proper order.

4. I have heard learned counsel for the parties.

5. Instead of giving any opinion on the submissions made on behalf of the contesting parties, I find that the impugned order dated 10.05.2016 cannot be

sustained in law.

6. The Parliament made certain amendments in the Act, vide Amendment Act, 2015, which came into force, with effect from 26.01.2016, vide

Gazette Notification, dated 18th January, 2016.

7. The objective of the amendments, so introduced in the existing Act, is to deliver the members of the Scheduled Castes and the Scheduled Tribes

greater justice as well as to provide for enhanced deterrent to the offenders. The Amendment Act, 2015, allowed establishment of Exclusive Special

Courts and appointment of Special Public Prosecutor for trial of offences, under the Act, to enable speedy and expeditious disposal of cases.

8. The term ""Special Court"" has been defined under Section 2(d), and the ""Exclusive Special Court"" has been defined under Section 2(bd) of the Act.

9. Section 14 of the Act prior to its amendment, read as under: •

14. For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by

notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.

10. Section 14 of the Act has been substituted by the Amendment Act, 2015. The substituted provisions of Section 14 read as under : •

14. Special Court and Exclusive Special Court.-

(1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by

notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief

Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the

offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a

period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in

attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the Patna High

Court Cr.Misc. No.25276 of 2016 following day to be necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the

date of filing of the charge sheet

11. At this stage, I think it appropriate to refer to Section 193 of the Cr. P.C., which reads as under :

193. Cognizance of offences by Courts of Session:- Except as otherwise expressly provided by this Code or by any other law for the time being

in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a

Magistrate under this Code.

12. It would be evident from a reading of Section 193 of the Cr. P.C. that the Investigating Officer is required to file his report on completion of

investigation under Section 173 of the Cr. P.C. in the Court of Magistrate only. Under ordinary circumstances, a Court of Session would be denuded

of the power to directly take cognizance of the offence unless the case is committed to it under Section 209 of the Cr. P.C. by a Court of Magistrate.

In other words, no Court of Session can take cognizance of any offence, as a Court of original jurisdiction, unless the case has been committed to it by

a Magistrate under the Cr. P.C. However, there is an exception to the general rule under Section 193 of the Cr. P.C., which permits the Court of

Session to take cognizance of an offence, as a court of original jurisdiction, if it is expressly provided either by the Cr. P.C. or by any other law for the

time being in force.

13. In the backdrop of the second proviso to the substituted Section 14(1) of the Act, which specifically confers power upon the Special Court and the

Exclusive Special Court to take cognizance of the offences under the Act directly, it would be evident that an exception to the general rule under

Section 193 of the Cr. P.C. has been created.

14. There is no dispute with regard to fact that the Act of 1989 is a Special Act and the second proviso to Section 14(1) of the Act, positively and

unequivocally, provides that the Special Court, which is essentially a Court of Session, shall have power to directly take cognizance of the offence.

Hence, the interdict of Section 193 of the Cr. P.C. has been removed by making specific provision in the Special Act.

15. In view of the legislative changes, as noticed hereinabove, it is pertinent to note that in view of substituted Section

14 of the Act, the police is required to transmit the FIR, after institution of the case to Special Court or Exclusive Special Court, as a Court of original

jurisdiction, and for the same reason, the charge-sheet or a complaint is also required to be filed before Special Court or Exclusive Special Court for

the offences under the Act. It would be further manifest that from the date of coming into force of the Amendment Act, 2015, the Court of

Magistrate, is not a Special Court or Exclusive Special Court within the meaning of Section 14 of the Act, shall not have any jurisdiction to entertain

any application and take cognizance of the offence under the Act. The requirement of the committal proceeding, under Section 209 of the Cr. P.C.,

has also been done away with. The object behind doing so is to enable speedy and expeditious disposal of the cases.

16. As on the date of taking cognizance of the offence under Section 3(1)(x) of the Act, the Chief Judicial Magistrate had no jurisdiction to take

cognizance, the order impugned dated 10.05.2016 and the subsequent orders passed by any court of Magistrate cannot be sustained.

17. Accordingly, the impugned order dated 10.05.2016 passed by the learned Chief Judicial Magistrate, Bettiah is set aside.

18. In case the case is still pending before the court of Magistrate, the court concerned shall forthwith send the entire record of Shikarpur P.S. Case

No.444 of 2015 to the Special Court. In case, the record of Shikarpur P.S. Case No.444 of 2015 has already been sent to the Special Court, the

Special Judge shall initiate a proceeding afresh from the stage of submission of charge sheet by the Investigating Officer meaning thereby that the

Special Judge shall be required to look into the materials available on record in order to take cognizance of the offence in accordance with law.

19. With the aforesaid observations and direction, the application is allowed.