

(2011) 09 JH CK 0068

Jharkhand High Court

Case No: Criminal Miscellenous Petition No. 1267 of 2009

Manik Lal and Others

APPELLANT

Vs

The State of Jharkhand and
Kartik Oraon

RESPONDENT

Date of Decision: Sept. 21, 2011

Acts Referred:

- Arms Act, 1959 - Section 27
- Penal Code, 1860 (IPC) - Section 304, 308, 34
- Railway Protection Force Act, 1957 - Section 11, 20(3)
- Railway Protection Force Rules, 1987 - Rule 243(2), 243(4)

Hon'ble Judges: H.C. Mishra, J

Bench: Single Bench

Final Decision: Allowed

Judgement

H.C. Mishra, J.

This petition has been filed for quashing the entire criminal proceeding arising out of Jagannathpur P.S. Case No. 26 of 2008 corresponding to G.R. No. 134 of 2008, presently pending before the Court of Session, Chaibasa in S.T. No. 206 of 2009. It has also been prayed that the order taking cognizance dated 12.12.2008 in the said case as also the order framing charges against the Petitioners by the learned Additional Sessions Judge-Fast Track Court-V, Chaibasa, by order dated 19.8.2009 be also quashed.

2. According to the prosecution case, the Petitioners, who were the personnel of Railway Special Protection Force and Railway Protection Force, were returning back after performing their duties on the vehicle of R.P.F. and they were also armed with arms and ammunitions. While returning back, they came across a road jam by the villagers due to some altercations between the villagers and the drivers of the dumpers transporting iron ore, due to demand of levy. The R.P.F. personnel,

requested the villagers to allow them to pass-by and when the villagers did not allow them, the R.P.F. personnel tried to negotiate the jam through the side of the road along with the vehicle, whereupon they were attacked by the villagers by brickbats. It is alleged that the villagers also used bows and arrows causing injuries to the R.P.F. personnel, caused damage to the vehicle and also to the arms being carried by them, forcing them to use force. They had to fire in air and ultimately, they also had to resort to firing, in which, two persons died. As the vehicle of the R.P.F. was badly damaged and some arms were also damaged by the villagers, the R.P.F. personnel had to leave the vehicle at the road itself and they ran for their safety towards the police station and they also informed the police about the occurrence.

3. On the basis of the information given by the Petitioner Manik Lal, Jagannathpur P.S. Case No. 25 of 2008 was instituted, F.I.R. whereof has been brought as Annexure-2 to this petition. Subsequent thereto, another F.I.R. was lodged by one Kartik Oraon, the son of one of the deceased stating that firing was made by the R.P.F. personnel causing death of his father and on the basis of the fradbeyan of said Kartik Oraon, Jagannathpur P.S. Case No. 26 of 2008 was instituted, corresponding to G.R. No. 135 of 2008 for the offences under Sections 304, 308, 34 of the Indian Penal Code and Section 27 of the Arms Act, F.I.R. whereof has been made Annexure-1 to this petition, out of which the present criminal proceedings arise against these Petitioners.

4. Upon investigation, the police submitted charge sheet against the Petitioners, which has been brought as Annexure-6, in which, it is clearly stated that due to altercation between the dumper drivers and the villagers, there was a road jam, during which, the R.P.F. personnel also came there and they wanted to negotiate the jam, whereupon the villagers attacked the R.P.F. vehicle, injured them and they also caused damage to the R.P.F. vehicle and the arms, due to which the R.P.F. personnel had to resort to firing, in which, two persons died. However, on the basis of the charge sheet submitted against these Petitioners, cognizance was taken by the Chief Judicial Magistrate, Chaibasa by order dated 12.12.2008. It appears from the documents brought on record by the Petitioners that processes were issued to the Petitioners, upon which, the Petitioners appeared before the Court below and the case was committed to the court of Session, which was received in the Court of Session on 19.8.2009. On the same day, the case was transferred to the Court of Additional Sessions Judge, Fast Track Court-V, and Chaibasa for favour of disposal and on the same day, by order dated 19.8.2009, charges were framed against all these Petitioners.

5. Learned Counsel for the Petitioners has challenged the order taking cognizance, as also the order framing the charges by the Additional Sessions Judge-Fast Track Court-V, Chaibasa, mainly on two grounds; firstly, it is submitted that mandatory provisions of Section 20(3) of the Railway Protect Force Act 1957, (herein after

referred to as the "Act") have not been complied with and without compliance of the same, the criminal proceedings could not be instituted against these Petitioners. It is further submitted that charge was framed against these Petitioners in a hot haste without giving any opportunity to the Petitioners for filing application for discharge and without even supplying the police papers; and on this score, the order passed by the learned Additional Sessions Judge-Fast Track Court-V, Chaibasa framing the charges against these Petitioners cannot be sustained in the eyes of law.

6. Learned Counsel for the Petitioners has drawn the attention of this Court towards Annexures-2 and 2/1, which are the movement orders, to show that the Petitioners were sent on official duty along with arms and ammunitions. Annexure-4 is the seizure list, to show that the vehicle of the R.P.F. was seized in damaged condition along with stones thereon. Annexure-5 is the report to show that the arms of the Petitioners were found in damaged condition.

7. Learned Counsel has further drawn the attention of this Court towards Section 11 of the Act to show that it shall be the duty of every superior officer and the member of the Force to protect and safeguard, inter alia, the railways property, passenger area and passengers; and towards Rule 243.2 and further to Rule 243.4 of the Railway Protection Force Rules, 1987 (herein after referred to as the "Rules") to show that the use of force and even the power to open fire are permissible for the protection of life and property in the given situation, if so necessary. Learned Counsel has submitted that whatever action was taken by the Petitioners, it was only when they were not allowed to move further and they were attacked upon, in which, the vehicle was badly damaged, arms were also damaged and personnel of the Force were also injured, forcing the Petitioners to use the force to protect the railway properties and also their lives, as is apparent from Annexure-3, which is the F.I.R. filed by the Petitioner No. 1 and also Annexure-6, which is the charge sheet, submitted by the police in the present case. It has further been submitted that the action of the Petitioners were duly protected u/s 20(3) of the Railway Protection Force Act, which reads as under:

20. Protection of acts of members of the Force.-

(1) xxx

(2) xxx

(3) Notwithstanding anything contained in any other law for the time being in force, any legal proceeding, whether civil or criminal, which may lawfully be brought against any member of the Force for anything done or intended to be done under the powers conferred by, or in pursuance of, any provisions of this Act or the rules there under shall be commenced within three months after the act complained of shall have been committed and not otherwise; and notice in writing of such proceeding and of the cause thereof shall be given to the person concerned and his superior officer at least one month before the commencement of such proceeding

(emphasis supplied)

8. A bare perusal of the aforesaid provision, clearly shows that the provision is mandatory in nature and no action could have been initiated against the Petitioners without fulfilling the requirements thereof. Learned Counsel has drawn the attention towards the decisions of the Hon"ble Patna High Court in the case of [Naresh Mohan Prasad and Others Vs. State of Bihar and Another](#), and in the case of [D.S. Bhoria and Another Vs. N. Singh](#), wherein, the Hon"ble Patna High Court has held that the prosecution against member of a Railway Protection Force cannot be continued without the non-fulfillment of the mandatory provision of Section 20(3) of the Act, failing which, the prosecutions were quashed by the Patna High Court. Learned Counsel has also submitted that once there is a mandatory provision under the Special Statute, the general Statute is to give its way and the procedure provided in the Special Statute has to be followed. In this connection, learned Counsel has placed reliance upon the decision of the Hon"ble Supreme Court of India in the case of [Raj Kapoor Vs. Laxman](#), as also of this Court in *Bhotna Mahto v. The State of Jharkhand* as reported in 2009 (2) JLR 258. Placing reliance of these decisions, learned Counsel for the Petitioners has submitted that criminal proceeding against these Petitioners cannot be continued and the same is fit to be quashed.

9. Learned Counsel for the Petitioners has also drawn the attention of this Court towards the orders passed by the learned Court below, which have been brought on record, to show that cognizance was taken against these petitioners on 12.12.2008 and thereafter on several dates, the case was adjourned for appearance of these Petitioners, for which the summons were ordered to be issued. Lastly on 9.7.2007, the learned Judicial Magistrate directed the office to issue bailable warrants against the Petitioners fixing 18.8.2009 as the service report of the summons were not received. It further appears that the Petitioners appeared in the Court below and on 19.8.2009, the commitment notification was received in the Court of Session, on the same date, the case was transferred to the Court of Additional Sessions Judge, Fast Track Court-V, Chaibasa, and on the same very day itself, i.e. on 19.8.2009, charges were framed against these Petitioners without supplying the police papers to the Petitioners and without giving any opportunity to the Petitioners for filing any application for discharge. Learned Counsel has submitted that even this action of the Court below cannot be sustained in the eyes of law and the order framing the charges is liable to be set aside.

10. Learned A.P.P. appearing on behalf of the State, on the other hand, submitted that there is no illegality in the impugned order, as also in continuance of the criminal proceedings against these Petitioners, inasmuch as, from the F.I.R. filed by the R.P.F. personnel itself, it is apparent that the Force was returning back after performing their duties and as such, it cannot be said that the force was used by these Petitioners in exercise of their official duty. This submission of the learned Counsel cannot be accepted, inasmuch as, admittedly the Railway Protection Force

was with arms and the vehicle, which were the railway properties, which were badly damaged by the mob and it was the duty of the Petitioners to protect the railway property.

11. After having heard the learned Counsels for both sides and upon going through the records, I am of the considered opinion that Annexure-6, which is the charge sheet filed by the police after investigation, clearly mentions that the accused persons were the R.P.F. personnel, they were attacked by the mob and their vehicle and arms were badly damaged and even, the R.P.F. personnel were injured. In this view of the matter, even though charge sheet was submitted by the police in the Court below, the Court below could not have taken the cognizance of the offence in absence of the mandatory requirement of Section 20(3) of the Act, which clearly lays down that no proceeding, criminal or civil, can be lawfully brought against any Member of the Force without complying its mandatory requirements, which had to be followed, failing which, cognizance could not have been taken by the Court below. I find sufficient force in the submission of the learned Counsel for the Petitioners in assailing the order passed by the learned Additional Sessions Judge-Fast Track Court-V, Chaibasa in a hot haste and it appears that without giving any opportunity to the Petitioners to file the application for their discharge and even without taking any precaution to see whether the police papers were actually supplied to the Petitioners or not, he proceeded to frame the charges against the Petitioners. Accordingly, neither the order passed by the learned Chief Judicial Magistrate taking cognizance of the offence, nor the order passed by the Additional Sessions Judge-Fast Track Court-V, Chaibasa framing charges against these Petitioners can be sustained in the eyes of law.

12. For the foregoing reasons, since I have held that the criminal proceeding could not be instituted against these Petitioners, the entire criminal proceeding in Jagannathpur P.S. Case No. 26 of 2008 corresponding to G.R. No. 134 of 2008, presently pending in the Court of Session at Chaibasa in S.C. No. 206 of 2009 cannot be continued and the same is, hereby, quashed. This criminal miscellaneous petition is accordingly, allowed.