
(1993) 08 PAT CK 0019

Patna High Court

Case No: Criminal Miscellaneous No. 9024 of 1993

Laxchami Prasad
Agrawal

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Aug. 5, 1993

Acts Referred:

- Arms Act, 1959 - Section 2, 27, 3, 39, 5
- Penal Code, 1860 (IPC) - Section 302, 34

Citation: (1994) 42 BLJR 1065 : (1994) CriLJ 1416 : (1993) 2 PLJR 466

Hon'ble Judges: Nagendra Rai, J

Bench: Single Bench

Advocate: Sudarshan Sharma, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Nagendra Rai, J.

This application is being disposed of at the stage of admission itself.

2. The sole petitioner has filed the present application for quashing the order dated 21-6-1993, passed by the 11th Additional Sessions Judge, Gaya, in Sessions Trial No. 18/93, 58/93 framing charges u/s 302 of the Indian Penal Code and Section 27 of the Arms Act against the petitioner and u/s 302/34, IPC against other accused persons.

3. The facts necessary for disposal of the present application are that a fardbeyan was lodged by one Smt. Anjani Sharma at 3 p.m. on 6-7-92 with regard to an occurrence which took place near Bari Road, Marufganj Mor in the town of Gaya at 2 p.m. at the place of occurrence itself in which her Mama (maternal uncle) Ramswarath Sharma was alleged to have been murdered. The petitioner is alleged to have fired at her Mama which

hit in the chest and as a result of which he died on the spot. The other accused persons were also standing there. On the basis of the Fardbeyan lodged by Smt. Anjani Sharma a first information report was lodged at Gaya Kotwali Police Station, being Case No. 141/92 and the police after investigation submitted charge-sheet under Sections 302/34 and Section 27 of the Arms Act against all the accused persons including the petitioner. The Chief Judicial Magistrate took cognizance and committed the case to the Court of Sessions. Thereafter the case was transferred to the Court of the 11th Additional Sessions Judge, Gaya, for trial.

4. Two of the accused persons, namely, Luxman Prasad Agrawal and Shatrughan Prasad Agrawal, filed an application on 16-6-93 to discharge them as there was no material against them. A rejoinder to that was also filed on behalf of the State. Thereafter, the Additional Sessions Judge-XI, heard the parties on the said petition as well as on the point of framing of charges and by the impugned order directed for framing of charges u/s 302, I.P.C. and Section 27 of the Arms Act against the petitioner Laxchmi Prasad Agrawal and under Sections 302/34, I.P.C. against the other accused persons.

5. Learned counsel for the petitioner, firstly, contended that the prosecution of the petitioner u/s 27 of the Arms Act is not permissible in law for the reason that no sanction has been obtained from the District Magistrate for prosecution of the petitioner u/s 39 of the Arms Act. Secondly, he submitted that the impugned order has been set aside at the instance of the two accused persons, namely, Shatrughan Prasad Agrawal and Luxman Prasad Agrawal by this Court in Cr. Misc. No. 8764/93 and the matter has been remitted to the Addl. Sessions Judge to re-hear the application filed by them and to pass a fresh order in accordance with law, in that view of the matter, framing of charges against the petitioner should also be quashed.

6. So far as first point is concerned, the learned counsel for the petitioner stated that Section 39 of the Arms Act provides that no prosecution shall be instituted against any person in respect of any offence u/s 3 without the previous sanction of the District Magistrate and as in the present case the allegation against the petitioner is that he has unlicensed fire-arm, his prosecution without sanction is bad in law. In support of his submission he relied upon the judgment of a single Judge of this Court, reported in 1986 LJR 449 (Kapildeo Baitha v. State of Bihar); wherein, it has been held that sanction of the District Magistrate is necessary before prosecution of an accused u/s 27 of the Arms Act.

7. I am unable to agree with the sub-mission advanced on behalf of the petitioner for the reasons stated hereinafter. Section 39 of the Arms Act provides as follows:-

"Previous sanction of the District Magistrate necessary in certain cases - No prosecution shall be instituted against any person in respect of any offence u/s 3 without the previous sanction of the District Magistrate."

This section prohibits prosecution against any person in respect of offence u/s 3 without the previous sanction of the District Magistrate. Section 3 of the Arms Act provides, inter alia, that "no person shall acquire, have in his possession, or carry any fire-arm or ammunition unless he holds in this behalf a licence issued in accordance with the provisions of this Act and the rules made thereunder". Thus, according to this section without a licence a person cannot acquire or keep in his possession or carry any fire-arm.

8. Section 27 of the Arms Act for which the charge has been framed against the petitioner after amendment by Act 42 of 1988 provides punishment for using arms. It runs as follows:-

Section 27. "Punishment for using arms, etc. -

(1) Whoever uses any arms or ammunition in contravention of Section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(2) Whoever uses any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall be liable to fine.

(3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of Section 7 and such use or act result in the death of any other person, shall be punishable with death".

A bare perusal of the aforesaid provisions will show that it punishes use of fire arm in contravention of Sections 5 and 7 of the Arms Act. Section 5 provides licence for manufacture, sale, etc. of arms and ammunition and Section 7 provides prohibition of acquisition or possession or of manufacture or sale of prohibited arms or prohibited ammunition. The ingredient of offence u/s 27 is the use of the arms and ammunition in contravention of provisions of Sections 5 and 7 of the Arms Act, mere possession of the arm, is not punishable u/s 2, 7 of the Act.

9. Thus, it is clear that for the prosecution u/s 27 of the Arms Act, previous sanction of the District Magistrate is not a condition precedent for the reason that Section 39 has no application with regard to the offence u/s 27 of the Arms Act. So far as the case of Kapildeo Baitha (1986 PLJR 449) (supra) relied upon by the learned counsel for the petitioner is concerned, it appears from paragraph 5 of the said judgment that the learned single Judge of this Court without even referring to the provisions of the Arms Act, has made an observation as follows:-

"From the judgment on the record it does not appear that the sanction was accorded for the prosecution of the appellant u/s 27 of the Arms Act, which is an essential ingredients before prosecution of a culprit u/s 27 of the Arms Act since the allegations is that the appellant had no licence for possessing a Pistol. Therefore, his conviction u/s 27 of the

Arms Act cannot be sustained and has to be set aside".

10. Learned Judge has not even referred to the relevant provisions of the Arms Act which requires sanction for the prosecution for the offence u/s 27 of the Arms Act. No doubt, in multi-judge Court judges are bound by precedents and procedure. The judicial decorum and legal propriety demand that where a single Judge does not agree with the decision of a Bench of co-ordinate jurisdiction, the matter shall be referred to a larger Bench, but there are exceptions to it. When the judgment has been rendered in ignorance of the statutory provisions then the judgment is per incuriam and is not binding on the Bench of co-ordinate jurisdiction. From the perusal of the judgment in the case of Kapildeo Baitha (1986 PLJR 449) (supra) it is clear that the learned single Judge without referring to the provisions of the Arms Act has held that sanction is necessary for prosecution of offence u/s 27 of the Arms Act; whereas, from the perusal of the provisions of the Arms Act it is clear that no sanction is required for the prosecution for the offence u/s 27 of the Arms Act. With great respect to the learned single Judge, the aforesaid observation given by him is per incuriam as the same is given in ignorance of the provisions of Sections 39 and 27 of the Arms Act. Accordingly, I do not find any force in the submission advanced on behalf of the petitioner that the prosecution of the petitioner for offence u/s 27 of the Arms Act in absence of the sanction of the District Magistrate is bad in law.

11. So far as the other point is concerned, the learned single Judge of this Court in Cr. Misc. No, 8784/93 has already quashed the impugned order at the instance of other accused on the ground that the order does not show the materials and reasons for framing charges against the accused persons and has directed the trial court to consider the matter afresh in regard to framing of charges against other accused persons. On the same reasonings the impugned order against the petitioner is set aside and the trial court is directed to consider the case of the petitioner also along with the other accused persons in the light of the observations made in the said case. It goes without saying that if there is a prima facie material against the petitioner to frame charge against him then the trial court will frame charge, otherwise it will discharge him.

12. In the result, the application is allowed with the aforesaid observation.