

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.14998 of 2018

Arising Out of PS.Case No. -21 Year- 2008 Thana -SAHEBGANJ District- MUZAFFARPUR

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Shankar Bhagat S/o Late Durga Bhagat, R/o Village- Bishambharpur, P.S.-
Sahebganj, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Bishandeo Prasad S/o Late Durga Bhagat,
3. Sashi Kant Kumar S/o Bishandeo Prasad, Both R/o Village- Bishambharpur,
P.S.- Sahebganj, District- Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nachiketa Jha, Advocate.

For the Opposite Party/s : Mr. Anant Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 30-08-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

2. 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 27.11.2017 passed by the
learned Judicial Magistrate, 1st Class, Muzaffarpur in Trial No. 120 of
2017 arising out of Sahebganj P.S. Case No. 21 of 2008 whereby the
application dated 08.05.2014 of the petitioner filed under Section 323
of the Cr.P.C wherein he had prayed for adding Section 307 of the
Indian Penal Code (for short 'IPC') as well as Section 27 of the Arms
Act and committing the case to the court of session has been rejected.

3. Learned counsel appearing for the petitioner submitted



that though the First Information Report (for short 'FIR') was registered for the offences punishable under Sections 307/34 of the IPC and 27 of the Arms Act, the police did not conduct a fair, committed and impartial investigation. They submitted a collusive report on completion of investigation. The charge-sheet was submitted for the offences punishable under Sections 323, 341 and 504 of the IPC and the court also took cognizance of those offences only. He contended that there is specific allegation in the FIR that when the informant was sitting at his door his younger brother Bishundeo Prasad came with his son Shashi Kant Kumar and they shot at him from pistol which hit him on his upper chest as a result of which he fell down. On the basis of the said allegation, the Investigating Officer was required to collect material and submit charge-sheet under appropriate sections, but he failed to do so as a result of which cognizance was taken under certain offences of petty nature only. He pleaded that the order impugned is on incorrect appreciation of facts and law. Hence, the same deserves to be set aside.

4. On the other hand, learned counsel for the State submitted that in absence of any injury report or sufficient material to attract offences punishable under Sections 307 of the IPC and 27 of the Arms Act, the learned Magistrate committed no error whereby he took cognizance of the offences punishable under Sections 322, 341



and 504 of the IPC only. The order impugned passed by the learned Magistrate was challenged before this Court in Cr. Rev. No. 961 of 2010 and this Court vide order dated 24.01.2013 rejected the application of the petitioner. He contended that in view of the aforestated facts when the petitioner moved before the learned Magistrate for adding Section 307 of the IPC and committing the case to the court of sessions, he observed that the commitment of the case to the court of sessions under Sections 323 Cr.P.C has to be backed by reasons as it is a judicial order. He further observed that what is essential for commitment of the case is formation of opinion that the case is one which ought to be tried by the court of sessions and such opinion has to be framed on the basis of material on records. Since the injury report was not on record when the cognizance was taken and the trial has not commenced after the cognizance of the offence, there was no occasion for the court of Magistrate to have committed the case to the court of sessions.

5. I have heard learned counsel for the parties and carefully perused the record.

6. The operative part of the impugned order dated 27.11.2017 reads as under :-

“Heard both the parties. After sincere perusal of the case records, this court finds that the cognizance order dated 12.01.2010 had been passed after the



application of judicious mind on the material available on the record and the legality of the order has been further fortified by the Order of the Hon'ble High Court of Patna vide order dated 24.01.2013 and this court is not the right forum to look into legality of the impugned cognizance order.

However, it was noticed that the prosecution has filed injury report dated 21.03.2016 of the informant Shanker Bhagat forwarded by the Superintendent of Sri Krishna Medical College and Hospital, Muzaffarpur and in the said report there is opinion regarding charred wounds on the chest of Shanker Bhagat and injuries on his body caused by the firearms and based on this opinion, the informant is requesting for committing the case. The case record is on recording of evidence stage. Under Sec. 323 of the CrPC it is provided that the case can be committed at any stage before the signing of the judgment it appears to the Magistrate that it is a fit case which ought to be tried by the Court of Sessions.

It is pertinent to mention at this juncture that in Sudhir and Others Vs. State of M.P. AIR 2001 SC 826, Emperor Mahammad Khan Rajakhan Pathan 1 I.C. 104, Queen Empress v Kayemaullah Mandal 1 CNW 414, Rajendra Yadav & Ors Vs. State of Bihar & Anrs (Cr. Misc. NO. 29208 of 2007) Prem Das v State of UP & Another Cr. Revision No. 2066 of 2010 it has been laid down that for the commitment



of the case to the Court of session under Section 323 CrPC the order of the Magistrate has to be backed by reasons as it is a judicial order. What is essential for commitment of the case is formation of the opinion of the Magistrate that the case is one which ought to be tried by the Court of session and such opinion has to be framed on basis of material records.

In the instant case, at the time of the cognizance the Injury Report of Shankar Ram was not on the records, at later stage, i.e. Recording of evidence as a subsequent development the said Injury Report has been submitted. However the prosecution has not got the said Injury Report exhibited. In the instant case, it is the duty of the prosecution to get the injury report exhibited and the examining Doctor examined so that the court is able to form its opinion regarding section 307 IPC and 27 of the Arms Act and commitment as prayed.

In light of the above discussions, the petition of the Informant dated 08.05.2014 is rejected. However, in the interest of justice the prosecution is at liberty to produce its evidence and takes proper steps to address its grievances if it wishes.”

7. Section 323 of the Cr.P.C under which the petitioner had filed his application in the court of Magistrate reads as under:-

“323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.

If, in any inquiry into an offence or a trial before a



Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provision of Chapter XVIII shall apply to the commitment so made.”

8. From a reading of the provisions prescribed under Section 323 of the Cr.P.C. It would be evident that in any enquiry into an offence or a trial before a Magistrate, if it appears to him that the case is one which ought to be tried by the court of session, he shall commit it to that court and thereupon the provisions of chapter XVIII shall apply to the committal so made.

9. However, the said provision does not empower the Magistrate to take cognizance of other offences on the basis of application filed either by the public prosecutor or by the informant where on submission of charge-sheet he has already taken cognizance of offences in respect of which charge-sheet has been filed.

10. The provisions prescribed under Section 323 of the Cr.P.C and 209 of the Cr.P.C operate in two distinct fields. Under Section 209 of the Cr.P.C when a case is instituted on a police report or otherwise, where the accused is brought before the Magistrate and it appears to him that the offence is triable exclusively by the court of



session, he shall commit the case after complying with the provisions of Section 207 or Section 208 of the Cr.P.C as the case may be to the court of session. This Section gives the Magistrate discretion to commit the case in view of gravity of the offence at the initial stage whereas Section 323 of the Cr.P.C empowers the Magistrate to consider and decide upon the question of commitment of the case to the court of session at any stage of proceeding before signing judgment, if he is of the opinion that the case is one which ought to be tried by the court of session.

11. Further, the power of the Magistrate under Section 323 of the Cr.P.C is wide in nature. It is only the satisfaction of the Magistrate concerned upon which, at any stage of the case, he can commit the case to the court of session for trial.

12. The expression 'ought to be tried by the court of session', used in Section 323 of the Cr.P.C has a very wide connotation. It is for the Magistrate to be satisfied that a prima facie case is made out against the accused on the basis of which the case has to be committed to the court of session.

13. In the present case, at the time of filing police report under Section 173 of the Cr.P.C the injury report was not submitted. The learned Magistrate took cognizance of the offences on the basis of materials available on record. Hence, there was no occasion for the



learned Magistrate to have taken cognizance of any other offence as desired by the informant. Moreover, the learned Magistrate, while passing the impugned order has clearly indicated that in course of trial if the prosecution would adduce the oral and documentary evidences on the basis of which he would be in a position to form opinion that a case for commitment is made out, the case may be committed to the court of session.

14. Besides that an application filed by the lawyer for the informant for commitment of the case was not maintainable in view of the provisions prescribed under Section 301 of the Cr.P.C, as a lawyer engaged by the informant is not a Public Prosecutor or Assistant Public Prosecutor within the meaning of Section 24 and 25 of the Cr.P.C for the State Government or the Central Government.

15. In view of the above discussions, I see no illegality in the impugned order.

16. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/Sneha

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05-09-2018
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