

IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.49671 of 2007

1. NAVEEN CHANDRA JHA
2. BHUVANESHWAR MISHRA
3. MD. SAFIQUE
4. DILIP MISHRA
5. MD. SAHIB
6. JAY PRAKASH MANDAL
7. UPENDRA RAM
8. SHYAMA NAND JHA
9. PANCHANAND THAKUR
10. KAIMI LAL CHOUDHARY @ KANAK LAL CHAUDHARY
11. KESHI LAL CHOUDHARY @ KAISHI LAL CHOUDHARY

Versus

1. STATE OF BIHAR
2. AMRENDRA KUMAR SINGH

For the Petitioner : Mr. Mahendra Thakur

For the State : Mr. Rajendra Nath Jha, A.P.P.

2. 28.02.2009

Heard learned counsel for the petitioners and the

State.

The petitioners seek quashing of the order of cognizance dated 11.7.2005 passed by the Chief Judicial Magistrate, Purnea in Sadar (Dagaruwa) P.S. Case No. 30 of 2005/G.R. No. 193 of 2005 under Sections 25 (1-B)a, 26, 35 of the Arms Act as affirmed in Criminal Revision No. 284 of 2005 by F.T.C. VII, Purnea dated 12.9.2007 on challenge by the petitioners.

Learned counsel submits that for an occurrence of 16.11.2004, petitioner no. 1 lodged Sadar (Dagaruwa) P.S. Case No. 338 of 2004 under Sections 307, 341 of the Penal Code and Sections 25(1-B)a, 26, 35 of the Arms Act against one Navin Chandra Jha and others.

The Police during investigation recorded that the accusation had been found to be false and, therefore, directed

institution of Sadar (Dagaruwa) P.S. Case No. 30 of 2005 against petitioner no. 1 and others. This was factually incorrect as in fact after investigation charge sheet has been filed under Section 143 and 504 of the Penal Code in Sadar (Dagaruwa) P.S. Case No. 338 of 2004. In any event, if a police case had been lodged and that had been found to be false, the appropriate procedure for the Police to follow was to book those who made the incorrect allegations and against whom further materials may have been transpired in that very case during investigation rather than institution of fresh first information report.

Learned counsel for the State sought to defend the order of cognizance.

The law stands settled that with regard to one occurrence normally two F.I.Rs. cannot be registered. If the accusation in Sadar (Dagaruwa) P.S. Case No. 338 of 2004 was found to be false or partly false, the Police have appropriate remedy and procedure to book those against whom materials may have been collected during that investigation itself. Apart from that in the facts of the present case, the very institution of Sadar (Dagaruwa) P.S. Case No. 30 of 2005 appears to be founded on the wrong premises that in the earlier Sadar (Dagaruwa) P.S. Case No. 338 of 2004 report of the allegations being false has been submitted when in fact on the contrary after investigation charge sheet under Section 143 and 504 of the Penal Code has been submitted and cognizance taken.

Looked at the either point of view, this Court is satisfied that the prosecution of the petitioners in Sadar (Dagaruwa) P.S. Case No. 30 of 2005 is not justified in law.

The order of cognizance dated 11.7.2005 in Sadar (Dagaruwa) P.S. Case No. 30 of 2005 is set aside. The order of the Revisional Court shall, therefore, merge with the order of this Court for the very reason discussed therein of limitation of jurisdiction.

The application stands allowed.

AKS/

(Navin Sinha, J.)

