

# Tarkeshwar Singh vs State Of Bihar & Ors on 24 June, 2010

**Author: Rakesh Kumar**

**Bench: Rakesh Kumar**

Criminal Miscellaneous No.67 OF 2000

In the matter of an application under Section 482 of the Code of Criminal Procedure

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Tarkeshwar Singh, son of Sri Raj Narayan Singh, resident of Village- Bhagwatpur, Police Station-Chandi, in the district of Bhojpur

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Versus

1. THE STATE OF BIHAR

2. Surendra Singh

3. Phutani Singh,

both sons of Ram Shakal Singh, resident of Village Debaria, Police Station- Krishnagarh in the district of Bhojpur.

4. Mohan Singh, Son of Sri Sarb Narayan Singh, resident of Village- Balihar, P.S. Buxar in the district of Buxar, presently residing in Mohalla- Karmantola, P.S. Arrah Nawada in the district of Bhojpur

5. Bihari Singh, Son of Sri Sarb Narayan Singh, resident of Village- Balihar, P.S. Buxar in the district of Buxar

6. Jagdamba Singh, Son of Late Ram Osila Singh

7. Rama Shankar Singh, Son of Late Tulsi Singh

8. Tantan Singh, Son of Sri Rama Shankar Singh

9. Shivjee Singh, Son of Sri Tena Singh

10. Paramjit Singh, Son of Sri Ram Bahadur Singh

All residents of Village- Majharia, P.S. Buxar Industrial Town, in the district of Buxar.

----- Opp.parties.

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For the petitioner: S/ Sri Akhileshwar Pd.Singh &

Bimal Kumar No.2, Advocates

For the State: Mr. G.P.Jaiswal, Sr. Advocate

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PRESENT

THE HON'BLE MR. JUSTICE RAKESH KUMAR

Rakesh Kumar, J.

The sole petitioner, while invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure , has prayed for quashing of the order dated 25.2.1999 passed by the learned

9th Additional Sessions Judge, Arrah in Sessions Trial No.349 of 1994, arising out of Arrah Nawada P.S. Case No.75 of 1994. By the said order, the learned Addl.Sessions Judge has refused to add charges under Sections 3,4 and 5 of the Explosive Substances Act,1908.

2. Short fact of the case is that on the basis of fardbeyan of this petitioner, a case vide Arrah Nawada P.S. Case No.75 of 1994 was registered on 8.5.1994 for the offences punishable under Sections 452,324,307 of the Indian Penal Code and Sections 3 and 4 of the Explosive Substance Act. In the F.I.R., the petitioner alleged that on 8.5.1994 in the morning at about 8.00 A.M. unknown accused persons entered into the house of the petitioner and exploded bomb and three persons of the informant side were assaulted and offence of attempt of Opp.Party no.2 to murder had also taken place. After registering the case police investigated the same and during the investigation the police found that Opp.Party nos.2 to 10 were involved in the occurrence and after obtaining sanction from the District Magistrate, Arrah for prosecuting the accused persons for offences under Sections 3,4 and 5 of the Explosive Substances Act submitted chargesheet against Opp.Party nos. 2 to 10 for the offences under Sections 452,324,307,120B of the Indian Penal Code and 3,4 and 5 of the Explosive Substance Act. In this case chargesheet was submitted on 5.9.1994, the date on which sanction was obtained.

3. After submission of the chargesheet on 19.9.1994, the learned Magistrate took cognizance of offences under Section 452,324,307,120B of the Indian Penal Code and Sections 3,4 and 5 of the Explosive Substances Act. After completion of appearance and supply of police papers, the case was committed to the Court of Sessions and in the case charges were framed on 1.6.1998. At the time of charge since sanction for prosecution under Sections 3,4 and 5 of the Explosive Substances Act was not available on the record, charges could not be framed for the offences under Sections 3,4 and 5 of the Explosive Substances Act. However, charges were framed against all the accused for the offences under Sections 452,324,307 and 120B of the Indian Penal Code. Subsequently, on 31.10.1998 a petition was filed on behalf of the prosecution for adding charges under Sections 3,4 and 5 of the Explosive Substances Act. Subsequent to filing of the petition by the prosecution, this petitioner being the informant on 7.11.1998 also filed similar petition. The defence filed rejoinder to the petition filed by the prosecution. The rejoinder was filed on 21.11.1998 and thereafter the matter was heard at length by the learned 9th Addl.Sessions Judge, Arrah.

4. During the hearing of petition dated 31.10.1998 filed by the prosecution for adding the charge for offences under Sections 3,4 and 5 of the Explosive Substances Act , a plea was taken on behalf of the defence that the District Magistrate, who had accorded sanction for prosecution under Sections 3,4 and 5 of the Explosive Substance Act, was not at all competent to accord sanction under Section 7 of the Explosive Substance Act. On behalf of the defence, a case law was cited, i.e. 1993 (1) PLJR 235, Jagat Narayan Upadhaya Vs. State of Bihar. The learned Sessions Judge after noticing observation of this Court recorded in Jagat Narayan Upadhaya's case ( supra) held that no contrary ruling was place by the prosecution and, accordingly, the learned Sessions Judge held that the sanction filed in the case was not valid sanction in the eye of law and, accordingly, the learned Addl.Sessions Judge by its order dated 25.2.1999 rejected the petition for adding charges under Sections 3,4 and 5 of the Explosive Substances Act.

5. Aggrieved with the order dated 25.2.1999, the petitioner, who was the informant of the case, approached this Court by filing the present petition.

6. Sri Akhileshwar Prasad Singh, learned counsel appearing on behalf of the petitioner, while challenging the order dated 25.2.1999 passed by the learned Addl. Sessions Judge, submits that while dismissing the petition, the learned Addl. Sessions Judge had incorrectly appreciated the case law, which was cited on behalf of the defence. During the course of hearing, Sri Akhileshwar Pd. Singh has produced a photo copy of the Notification No.S.O. 3583 dated 2nd December, 1978 issued by the Government of India. Let it be kept on record. While relying on this Notification, learned counsel for the petitioner submits that the sanction order, which is Annexure-2 to the petition, was issued in accordance with the provisions contained in Section 7 of the Explosive Substance Act and according to him, learned Addl. Sessions Judge without minutely examining the sanction order has incorrectly held that the District Magistrate was not competent to accord sanction. The Sanction order, which is Annexure-2 to the petition, contains the averment that the District Magistrate was authorized by the Government of India in view of Notification contained in S.O.No.3583 dated 2nd December, 1978.

7. Sri Akhileshwar Pd. Singh, learned counsel for the petitioner further argued that the learned Addl. Sessions Judge, while rejecting the prayer to add charge under Sections 3,4 and 5 of the Explosive Substances Act, has heavily relied upon the judgment of this Court passed in Jagat Narayan Upadhaya's case (Supra). He submits that the fact of Jagat Narayan Upadhaya's case (Supra) was entirely different from the fact of the present case. In Jagat Narayan Upadhaya's case (Supra), the petition was filed after the order of cognizance and it was argued that the District Magistrate was not competent for according sanction of the prosecution. The learned court below incorrectly has taken cognizance of the offences. The said case was rejected on the ground that the same was premature. So far as the present case is concerned, it was submitted that in this case, prosecution sanction was granted by the District Magistrate in accordance with authorization given by the Central Government with the consent of the State Government in view of notification dated 2.12.1978. Accordingly, it was argued that the learned Sessions Judge has incorrectly appreciated the Judgment passed in Jagat Narayan Upadhaya's case (Supra).

8. Sri Akhileshwar Pd. Singh, learned counsel appearing on behalf of the petitioner has relied upon a Judgment of Hon'ble Supreme Court reported in (2000)1 SCC 555 (State of Madhya Pradesh Vrs. Bhupendra Singh). He submits that in the said case sanction for prosecution under Section 7 of the Explosive Substance Act was granted by the Addl. District Magistrate and, accordingly, the Supreme Court, while rejecting the appeal preferred by the State of Madhya Pradesh, had referred to the Central Government's Notification dated 2.12.1978 and held that by the said Notification, the District Magistrate was delegated with the power for according prosecution sanction under the Explosive Substances Act. Accordingly, it has been argued that the order of the learned Addl. Sessions Judge, whereby prayer for adding charges under Sections 3,4 and 5 of the Explosive Substances Act was rejected solely on the ground that the District Magistrate was not competent to accord sanction, is erroneous order, which is not sustainable in the eye of law and, as such, the said order is fit to be set aside and the learned Addl. Sessions Judge may be directed to proceed in accordance with law, particularly proceed with the prosecution against Opp. Party no.2 to 10 under

the provisions of Sections 3,4 and 5 of the Explosive Substances Act besides proceeding with the offences under the provisions of the Indian Penal Code, for which they have already been charged.

9. In this case, despite valid service of notice on Opp.Party nos. 2 and 9, they have not chosen to appear before this Court. Opp. Party nos. 3 to 8 and 10 had entered their appearance through their advocate by filing Vakalatnama dated 3.5.2000. However, at the time of hearing, none appeared on behalf of Opp. Party nos. 3 to 8 and 10.

10. Besides hearing, learned counsel for the petitioner, I have also heard Sri G.P.Jaiswal , learned Senior Counsel appearing on behalf of the State. I have examined the materials available on record. After perusal of the Notification issued by the Government of India, contained in S.O.No.3583 dated 2nd December, 1978, there is no ambiguity on the point that all the District Magistrates in the State of Bihar are competent to accord prosecution sanction under the provisions of the Explosive Substances Act. At this stage , it is appropriate to re-produce the version of the Notification dated 2nd December,1978, which is as follows:

" In exercise of the powers conferred by Clause (1) of article 258 of the constitution and in supereession of all previous notifications issued in this behalf, the President , with the consent of the Govt. of the State of Andhra Pradesh, Assam, Bihar, Madhya Pradesh and Tamilnadu, hereby entrusts to all District Magistrates in the said States , the functions of the Central Govt. under section 7 of the Explosive Substance Act 1908( 6 of 1908)"

11. The aforesaid notification makes it clear that the Central Government with the consent of Govt. of Bihar has authorized all the District Magistrates of the State of Bihar to function under Section 7 of the Explosive Substances Act. Since the learned Addl.Sessions Judge in the present case has rejected the prayer for adding charges under Sections 3,4 and 5 of the Explosive Substances Act only on the ground of using Section 7 of the Explosive Substances Act, it would be appropriate to quote the provision contained in Section 7 of the Act, which is as follows:

"7. Restriction on trial of offences- No court shall proceed to the trial of any person for an offence against this except with the consent of Central Government."

12. In view of the aforesaid provision, it is clear that by virtue of Section 7 of the Act, trial of a person for any of offences under the Act is provided subject to the consent of the Central Government. In view of the aforesaid notification dated 2.12.1978, which was issued by the Government of India while exercising power under Section 258 of the Constitution of India with the consent of the State of Bihar, it is clear that a trial cannot be initiated without the consent. It does not say that for such offences no court can take cognizance of the offence. This point was clarified by this Court in Jagat Narayan Upadhaya's case( Supra).It is appropriate to quote paragraph-4 of the Jagat Narayan Upadhaya's case ( Supra):

"It will be apparent from section 7 of the Act that the restriction is against proceeding to the trial of any person and not against taking of cognizance, or making any further

inquiry in the matter. It is well settled that the trial does not commence at the stage of taking of cognizance, and commitment proceeding is also in the nature of an inquiry. The bar, therefore, will apply only when a court proceeds to try the accused person without the consent of the State Government."

13. In view of the facts and circumstances of the present case , particularly in view of provisions contained in Section 7 of the Explosive Substances Act as well as notification dated 2.12.1978 coupled with the law clarified by this Court as well as Hon'ble Supreme Court , as referred to above, I am of the considered opinion that the learned 9th Addl. Sessions Judge, Arrah has not appreciated the provisions as well as case law in its right perspective and, as such, this Court has no option, but to set aside the order dated 25.2.1999 passed by the learned 9th Addl. Sessions Judge in Sessions Trial No.349 of 1994. Accordingly, the said impugned order is set aside and the matter is remanded to the trial court for examining the material in accordance with law and if there is sufficient material to disclose the commission of offence under the provisions of Explosives Substances Act, the learned trial court will proceed in accordance with law. Keeping in view the fact that the case remained pending before this Court for a long period, it is desirable to direct the trial court to pass an appropriate order on the petition dated 31.10.1998 filed on behalf of the prosecution and decide the issue within a period of one month from the date of receipt/production of a copy of this order and, thereafter, the learned trial Judge will endeavour to conclude the trial expeditiously and preferably within a period of nine months from the date of order passed on petition filed on 31.10.1998. It is further directed that at least twice in every week the trial court will take up the trial in the present case. It is further directed that while proceeding with the case, the learned trial court will not allow unnecessary adjournment.

14. With the above observation and direction, the petition stands allowed.

( Rakesh Kumar, J ) Patna High Court, Patna Dated : the 24th June, 2010 Nawal Kishore Singh/N.A.F.R.