

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NOS. 63-64 F 2002

NANDU & ANR.

..... APPELLANTS

VERSUS

STATE OF BIHAR & ANR.

.....

RESPONDENTS

ORDER

1. One Rajan died on 29th of April, 1983. According to the appellant, he was the leader of a criminal gang and accused in a large number of cases. In order to apprehend him, a police team was constituted and when they went to apprehend him he resorted to firing on police personnel, causing injuries to many of them. Police party resorted to firing in self defence in which he was injured and when being taken to the Patna Medical College Hospital, on way, he succumbed to the injuries. Aforesaid incident led to registration of Kotwali (Jakaknpur) P.S. Case No. 415 dated 29.4.1983 under Sections 307, 324/34 of the Indian Penal

Code and 25(A)/27 of the Arms Act. The investigation of this case was supervised by the Superintendent of Police, who found the aforesaid story true.

2. However, the mother of said Rajan filed a complaint in the court of the Judicial Magistrate *inter alia* alleging that appellant No. 2 herein Kameshwar Prasad Singh and other Police Officers shot dead her son Rajan and in order to hush up the matter, a false story was cooked up that Rajan was killed in an encounter. Chief Judicial Magistrate, Patna by order dated 3rd of April, 1987 passed in Complaint Case no. 192(c)83 dismissed the complaint. Mother of the said Rajan i.e. complainant Savitri Devi aggrieved by the same, filed Criminal Revision No. 464 of 1988 before the High Court. The High Court by its order dated 22nd June, 1999 set aside the order of the learned Magistrate dismissing the complaint and directed to hold further enquiry. Thereafter the learned Magistrate by order dated 31st of July, 2000 took cognizance of the offence under Section 302 of the Indian Penal Code and directed for issuance of non-bailable warrant of arrest against the appellants herein.

3. Appellants challenged the aforesaid order before the High Court in an application filed under Section 482 of the Code of Criminal Procedure *inter alia* contending that their prosecution without the sanction of the competent authority under Section 197 of the Code of Criminal Procedure is illegal. The High Court by the impugned order dismissed the application but while doing so observed that the materials suggest that the sanction under Section 197 of the Code of Criminal Procedure is necessary but in view of an earlier order, it is not inclined to go into this question but gave the appellants the liberty to raise the same at the time of framing of the charge.

JUDGMENT

4. Mr. Nagendra Rai, Senior Advocate appearing on behalf of the appellants submits that earlier application filed before the High Court was against the dismissal of complaint by the Magistrate and when the said order was set aside and the matter remitted back further materials came into existence

and taking into consideration the same, later the High Court had found sanction necessary but erroneously did not go into that question finally in view of the earlier order. Mr. Gopal Singh, learned counsel appears on behalf of the respondent-State. Respondent No. 2 is dead and her legal heir has been substituted but despite service of notice nobody has chosen to appear on her behalf. While considering the question of sanction, the High Court in the impugned order has observed as follows:

“I have a different view in the backdrop and the circumstances of the case but when a coordinate Bench has already rejected the plea of sanction in the above mentioned manner there remains no scope for this Court to enter into that arena again.”

4. We are of the opinion that once the High Court in the impugned order had come to the aforesaid conclusion, it ought not to have taken into consideration the observation of the Court made earlier. The aforesaid observation was made in the revision application preferred against the order of dismissal of complaint. Said order was set aside by the High Court and it directed for further enquiry. Thereafter other

materials come into existence. In the face of the same, the High Court having come to the conclusion that sanction was necessary ought not to have dismissed the application.

5. In the result, the appeals are allowed, the impugned order of the High Court is set aside as also that of the learned Chief Judicial Magistrate dated 31st July, 2000 passed in Complaint Case No. 192[C] of 1983.

.....J
[HARJIT SINGH BEDI]

.....J
[C.K. PRASAD]

NEW DELHI
AUGUST 05, 2010.

JUDGMENT