

# **SUPREME COURT OF INDIA**

Birendra K. Singh

Vs.

State of Bihar

Crl.A.No.340 of 2000 (Arising out of SLP (Crl.) No. 3239 of 1999)

(K. T. Thomas and R. P. Sethi JJ.)

07.04.2000

## **ORDER**

**K.T. THOMAS, J.**

1. Leave granted.

2. The appellant is a Police Sub-Inspector. Now a complaint has been filed against him and some others for the offence under Section 302 read with Section 34 of the Indian Penal Code on the allegation, inter alia, that the person killed in a police firing was actually murdered by the appellant and his companions. The Magistrate issued process to the appellant and other accused persons. We are not aware whether the said process was issued after complying with the mandatory provision contained in Section 202(2) of the CrPC as explained by this Court in *Roosy and Another v. State of Kerala* and Ors.: 2000CriLJ930 . But the question now posed by the appellant was that the Magistrate ought not have taken cognizance of the offence without the sanction contemplated in Section 197 of the Criminal Procedure Code. The said objection was not accepted by the High Court and therefore, the petition filed by the appellant was dismissed as per the impugned order.

3. We are of the opinion that the stage for raising such objection could be when the accused are called upon to address arguments under Sections 227 and 228 of the CrPC. Such a stage would reach only if the case is committed to the Court of Sessions. The advantage for the accused and the State as well as for the complainant to wait till then is that the order of committal would be supported by the materials envisaged in Section 202 of the Code and the question can be considered in the light of such materials also. We permit the appellant to raise the contention relating to sanction under Section 197 of the Code before the Sessions Court at the appropriate stage mentioned above. If any such contention is raised, the same shall be dealt with and disposed of by a speaking order by the Sessions Court untrammelled by any observations made in the impugned order. It is needless to say that the appellant shall be released on bail if he files an application for the same on such conditions as the Chief Judicial Magistrate, Gaya, deems fit to impose.

4. The Appeal is disposed of accordingly.