

Rajendra Singh and Ors Vs. State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Aug-03-2017

Appellant : Rajendra Singh and Ors

Respondent : State of Jharkhand and Anr

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. M.P. No.1162 of 2008

----- 1. Rajendra Singh, son of Late Binda Singh.

2. Bhanu Pratap Singh, son of Sri Rajendra Singh (Both residents of Village Jagdishpur, Post Office Rajapatti Kothi, Police Station Baikunthpur, District Gopalganj (Bihar).

3. Daroga Singh, son of Pramanik Singh, R/o Village Katalpur, Post Office Katalpur, Police Station Baikunthpur, District Gopalganj (Bihar) Petitioners
Versus 1. The State of Jharkhand 2. Upendra Singh, son of Sri Shrikant Singh, R/o Nutandih, Post Office Jagjiwan Nagar, Police Station Saraidhella, District Dhanbad Opposite Parties ----- CORAM:HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY ----- For the Petitioners : Mr. Birendra Kumar, Advocate
For the State : Addl.P.P. For the O.P. No.2 : Mr. A.K. Kashyap, Sr. Advocate -----
6/03.08.2017 This Criminal Miscellaneous Petition has been filed under Section 482 of the Code of Criminal Procedure with a prayer to quash the entire criminal proceeding of Complaint Case No.1862 of 2006 passed by the Judicial Magistrate, 1 st Class, Dhanbad under Section 341/323/379 of I.P.C. as well as to quash the

order dated 19.01.2008, whereby summons have been issued against the petitioners. Heard learned counsel appearing for the petitioners, learned Addl.P.P. appearing for the State and learned senior counsel appearing for opposite party no.2. The case of the complainant in a nutshell is that on 18.11.2006 at about 8:00 a.m., the accused persons advised the complainant to get the fetus of his wife aborted. The complainant did not agree for the same. Thereafter, the accused persons assaulted the complainant with slaps and committed theft of Rs.66,500/- (Rupees sixty six thousand five hundred). 2 During enquiry, the complainant examined himself on solemn affirmation and stated that on 18.11.2006 at about 8:00 a.m., the occurrence took place wherein the accused persons came to his house and assaulted him and also committed theft of Rs.66,500/- (Rupees sixty six thousand five hundred) which was kept in the briefcase. The complainant also examined another witness in the enquiry. On perusal of the complaint, S.A. of the complainant and the statement of the enquiry witness, the learned Magistrate found prima facie case for the offences punishable under section 341, 323 and 379 of the Indian Penal Code and vide the impugned order dated 19.01.2008/ 21.01.2008 in C.P. Case No. 1862 of 2006, directed issuing of process against the accused persons on filing of the requisites by the complainant. Learned counsel for the petitioners submits that the complaint has been filed as a counter blast of the compromise held earlier in the case filed by the wife of the complainant against the complainant as well as other accused persons alleging therein the commission of offences relating to treatment with cruelty and harassment meted out to her in connection of demand of dowry. It is further submitted that the dishonesty of the complainant is apparent from the fact that departing from the terms and conditions of the said compromise, the complainant filed Title (Matrimonial) Suit No.472 of 2006 in the Family Court, Dhanbad, praying therein for a decree for judicial separation. It is further submitted that the learned Magistrate has failed to pass a reasoned order enumerating therein the list of the materials that has come during enquiry. It is further submitted that the complainant is bent upon harassing the petitioners, as he holds them responsible for his disturbed relationship with his wife, which is evident from the petition of judicial separation filed by him vide Title Matrimonial Suit No.472 of 2006. Learned counsel has also drawn attention of this Court to an affidavit (Annexure-3) wherein the complainant has admitted his guilt

regarding ill- treatment to his wife and assured that he will mend himself and 3 will not repeat his mistakes. Further learned counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court in the case of State of Haryana and Ors. Vs. Bhajan Lal & Ors. reported in 1992 Supp(1) SCC335 wherein in Paragraph-102 Their Lordships have laid down the circumstances by way of illustration under which, the F.I.R. and criminal proceeding can be quashed and submitted that this case is covered by the seventh point. Paragraph 102 of the said judgment reads as under:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police

officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion 4 that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. The learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court in the case of G. Sagar Suri and Another Vs. State of U.P. & Others (2000) 2 SCC636 and submitted that it can be said that the order taking cognizance being bad is fit to be set aside. Mr. A.K. Kashyap, the learned senior counsel appearing for opposite party No.2, submits that the fact that on 18.01.2007, the complainant's wife gave birth to a male child as has been submitted by the learned counsel for the petitioner corroborates the case of the complainant that he opposed the advice of the petitioners for abortion of the fetus, hence the occurrence relating to this case took place. Further, he submits that during enquiry, the witnesses have categorically stated that the petitioners assaulted the complainant and also committed theft of Rs.66,500/- (Rupees sixty six thousand five hundred). Hence, the Magistrate has rightly found prima facie case regarding commission of the offences punishable under Section 341/323/379 of I.P.C. It is further submitted that though in the complaint it has also been mentioned that the offence punishable under Section 406 I.P.C. has also been committed but the fact that the learned Magistrate has applied his mind is evident from the fact that as there was no material in the record regarding commission of

the offence punishable under section 406 I.P.C hence the learned Magistrate has rightly not taken cognizance of the said offence and therefore the order taking 5 cognizance against the petitioners being proper and legal in all respect does not warrant interference by this court in exercise of the power under section 482 Cr.P.C., and this petition being without any merit be dismissed. The Hon'ble Supreme Court in the case of State (Delhi Admn.) vs. I.K. Nangia & Anr. AIR1979(SC) 1977 reiterated the settled principle of law as to when process can be issued under section 204 Cr.P.C. by holding that: The test as laid down by this court in the State of Bihar Vs. Ramesh Singh (1978) 1 SCR257 is that at the initial stage, if there is a strong suspicion which leads the court to think that there is a ground for presuming that the accused has committed an offence, then it is not open to the court to say that there was no sufficient ground for proceeding against the accused. The principle of law relating to the necessity of passing a reasoned order while issuing processes under Section 204 Cr.P.C. is settled by the Hon'ble Apex Court in the case of Kanti Bhadra Shah & Anr. Vs. State of West Bengal {(2000) 1 SCC722, wherein Their Lordships have in paragraph 12 has held as under:-

12. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial. It is a salutary guideline that when orders rejecting or granting bail are passed, the court should avoid expressing one way or the other on contentious issues, except in cases such as those falling within Section 37 of the Narcotic Drugs and Psychotropic Substances

Act, 1985. 6 The Hon'ble Supreme Court gave a note of caution for exercising the power under Section 482 Cr.P.C. by holding in paragraph-103 of the Bhajan Lal Case (supra), Their Lordships have held which reads as under:-

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer any arbitrary jurisdiction on the court to act according to its whim or caprice. The Hon'ble Apex Court reiterated the scope of exercise of power under section 482 Cr.P.C. in Paragraph-8 of the case of Binod Kumar & Ors. vs. State of Bihar & Anr. reported in (2014) 10 SCC663as under:- 8.In proceedings instituted on criminal complaint, exercise of the inherent powers to quash the proceedings is called for only in case where the complaint does not disclose any offence or is frivolous. It is well settled that the power under Section 482 Cr.P.C. should be sparingly invoked with circumspection; it should be exercised to see that the process of law is not abused or misused. The settled principle of law is that at the stage of quashing the complaint/FIR, the High Court is not embark upon an enquiry as to the probability, reliability or the genuineness of the allegations made therein. In the case of N. Soundaram vs. P.K. Pounraj, reported in (2014) 10 SCC616in Paragraph 13, the Hon'ble Apex Court also concurred with the settled principle of law relating to exercise of power under section 482 of Cr.P.C. as under:-

13. It is well settled by this Court in a catena of cases that the power under Section 482 Cr.P.C. has to be exercised sparingly and cautiously to prevent the abuse of process of any court and to secure the ends of justice. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the 7 exercise of its power under Section 482 Cr.P.C. An investigation should not be shut out at the threshold if the

allegations have some substance. After going through the entire records, I find that the enquiry witnesses have categorically stated about the ingredients of the offences punishable under Section 341/323/379 I.P.C. and the materials available on record are sufficient to constitute a strong suspicion. Hence, in view of the submission made on behalf of the parties and the allegation prima facie constituting offences under which cognizance has been taken, I do not find any illegality or irregularity warranting interference of this Court in exercise of its power under section 482 Cr.P.C. in the order taking cognizance by the learned Magistrate. Accordingly, this criminal miscellaneous petition being without any merit, stands dismissed. (Anil Kumar Choudhary, J.) Animesh

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