

Tilleshwari Devi and ors. Vs. State of Bihar and anr.

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Court : Patna

Decided On : Sep-06-2005

Judge : Chandramauli Kumar Prasad, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 323, 342, 376 and 504; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173 and 190

Appeal No. : Cri. Misc No. 5520 of 2004

Appellant : Tilleshwari Devi and ors.

Respondent : State of Bihar and anr.

Advocate for Def. : M.N. Jha, APP

Advocate for Pet/Ap. : N.C. Verma, Adv.

Disposition : Application dismissed

Prior history : Chandramauli Kumar Prasad, J. 1. This application has been filed for quashing the order dated 3.8.2002 passed by the Chief Judicial Magistrate, Muzaffarpur in Mithanpura PS Case No. 119 of 2001 (Trial No, 938 of 2002) whereby he had taken cognizance of the offence under Sections 376, 342, 323, 504/34 of the Indian Penal Code. 2. Short facts giving rise to the present application are that on the basis of the report given by opposite party No. 2, Mithanpura PS Case No. 119 of 2001 was registere

Judgement :

Chandramauli Kumar Prasad, J.

1. This application has been filed for quashing the order dated 3.8.2002 passed by the Chief Judicial Magistrate, Muzaffarpur in Mithanpura PS Case No. 119 of 2001 (Trial No, 938 of 2002) whereby he had taken cognizance of the offence under Sections 376, 342, 323, 504/34 of the Indian Penal Code.

2. Short facts giving rise to the present application are that on the basis of the report given by opposite party No. 2, Mithanpura PS Case No. 119 of 2001 was registered under the aforesaid sections. The police, after investigation, submitted final form and forwarded only one accused person for trial. When the said final form along with case diary was placed for consideration before the learned Magistrate, he found sufficient material, prima facie, showing complicity of the petitioners also in the crime. Accordingly, he differed with the same, took cognizance of the offence and directed for issuance of process against the petitioners also.

3. Learned counsel for the petitioners contends that once the police had not forwarded the petitioners for trial, the learned Magistrate did not had any jurisdiction to differ with the same and take cognizance of the offence against the petitioners and issue process against them. In support of the submission, he has placed reliance on an unreported decision of this Court dated 9.10.2001 passed in Cr. Misc. No. 14580 of 2000 (Birendra Singh and Ors. v. The State of Bihar and Ors.). I do not find any substance in this submission of the learned counsel.

4. This Court had the occasion to consider the aforesaid decision in the case of Horil Sao and Ors. v. The State of Bihar and Ors. 2002 (1) PLJR 318 and on consideration of the authorities of the Supreme Court, came to the following conclusion :

17. For the reasons stated above, I do not have slightest doubt in mind that the learned Magistrate while exercising its power under Section 190 of the Code is not bound by the conclusion arrived at by the officer incharge of the police station in a

case exclusively triable by court of Sessions while submitting the report under Section 173 of the Code and in a case in which the materials collected during the course of investigation and forming part of the report under Section 173, Cr PC, prima facie, suggest complicity of the accused persons in the crime although named in the FIR but not chargesheeted, still the Magistrate can differ with the conclusion and take cognizance of the offence. The Magistrate has such power under Section 190 of the Code. I hasten to add that although the police is master of investigation but what treatment has to be given to the report is in the domain of the Magistrate.

5. As the learned Magistrate had directed for issuance of process against the petitioners finding sufficient materials against them, I do not find any error in the said order.

6. Application stands dismissed with the observation aforesaid.

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