

Ahilya Devi @ Ahiya Devi and ors. Vs. State of Bihar and anr.

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Court : Patna

Decided On : Mar-20-2008

Judge : Abhijit Sinha, J.

Appellant : Ahilya Devi @ Ahiya Devi and ors.

Respondent : State of Bihar and anr.

Disposition : Application dismissed

Judgement :

Abhijit Sinha, J.

1. The petitioners who have been impleaded as accused in Complaint Case No. 594(C) of 2001 have prayed for the quashing of order dated 7.5.2007 passed by the learned Sessions Judge, Nalanda at Biharsharif in Criminal Revision No. 24 of 2007 by which he has dismissed the revision filed against order dated 21.12.2006 passed in the aforesaid complaint case by Sri Dhirendra Mishra, Judicial Magistrate, First Class, Biharsharif, whereby he has allowed the petition dated 15.11.2006 filed by the prosecution under Section 216 Cr.P.C.

2. The complainant Most. Rajo Devi, impleaded herein as O.P. No. 2, filed the aforesaid complaint alleging, inter alia, that at around 11 A.M. on 11.7.2001 while she was in her house some altercation took place between the parties over construction of a wall by the accused persons, her son, Shashi Bhushan Sharma,

protested and her other son, Sanjeev Sharma, came on hearing nulla and tried to intervene. It is further alleged that the accused persons having conspired and premeditated amongst themselves forcibly entered into the house of the complainant where at the point of lethal weapons accused Sanjeev Kumar, Gajendra Sinha and Pappu Kumar took captive her three sons and accused, Ahilya Devi, Sanjana Srivastava alias Sanju and Manish Kumar, snatched gold ear rings worth Rs. 5000/- from Pinki Devi, the complainant's daughter-in-law, Sanju also took away a videocon T.V. worth Rs. 3000/- and Manish took away a box from the room. The petitioners allegedly also took away utensils from the house ,fired 3-4 rounds and left the premises after advancing extending threats to the complainant. It is stated that on hearing the sound of firing people of the neighbourhood assembled and saw the accused persons fleeing. The complainant went to Shohsarai P.S. to lodge information of the occurrence but there she found accused Pappu with two others talking to the Sub-Inspector and then leaving and later on the complainant's son was arrested by the police and sent to jail. It has further been alleged that there was a panchayati between the parties over the construction of the wall and although both the parties accepted the decision of the panchayat, yet, as per their plans accused persons, only to harass the complainant and to grab her property, had committed such occurrence in collusion with local police and had also got the complainant's son sent to jail.

3. It appears that at the inquiry under Section 202 Cr.P.C. the learned Magistrate found offences only under Sections 341 and 448 I.P.C. to have been made out against the petitioners but did not find the case of theft to be true and accordingly took cognizance thereunder. It further appears that at the trial the complainant adduced evidence before charge and by order dated 23.4.2006 the evidence of the prosecution was closed and on 27.4.2006 the accusations was explained to the accused persons for offences under Sections 341 and 448 I.P.C. only.

4. However, on 15.11.2006, a petition under Section 216 Cr.P.C. was filed by the complainant to the effect that although accusations under Sections 341 and 448 I.P.C. was explained to the accused yet during the course of evidence sufficient evidence had come on record for offences also under Sections 452, 323, 380/34 I.P.C. apart from Sections 341 and 448 I.P.C. and accordingly a prayer was made

for adding those sections also so that the accused persons could also be punished thereunder. The learned Magistrate on consideration of the matter by order dated 21.12.2006 directed the petitioners herein to remain physically present in court for framing charge under Sections 323 and 379 I.P.C. This order was put to challenge in Cr. Rev. No. 24 of 2007 before the Sessions Court but the same was dismissed by order dated 7.5.2007 on a finding that although the learned Magistrate had not followed the procedure as laid down in the Code of Criminal Procedure, yet under Chapter XXIV Cr.P.C. Criminal Courts having power of Judicial Magistrates of First Class could add/change the charges in respect of which orders have been passed and no prejudice would be caused to the accused as they would have the opportunity to test the veracity of the witnesses.

5. It has been submitted by the learned Counsel for the petitioners that the instant complaint has been filed by way of a counter blast to Shohsarai P.S. Case No. 249 of 2001 instituted at the instance of the petitioner party herein on the allegation that on the date of occurrence the complainant's son and others after forcibly entering into the house of the petitioners, variously armed with lethal weapons had brutally assaulted the petitioners with intention to kill Ravindra Kumar alias Pappu and had also snatched the ornaments and watch of Sanju Kumari and had also fired from their arms with intent to kill Sanju Kumari and that the said case on commitment was numbered as Sessions Trial No. 228 of 2002 and was pending before the learned 7th Additional Sessions Judge, Nalanda at Biharsharif and the petitioner under Section 216 Cr.P.C. had only been filed with the intent of putting pressure on them in the Sessions Trial.

6. It was also sought to be submitted that it would be apparent from the statement on S.A. of the complainant at the inquiry that she herself had not supported the case of theft and her witnesses had also deposed in conflicting terms regarding the alleged theft and as a matter of fact even the learned Magistrate had not found a prima facie case under Section 379 and 323 I.P.C. to have been made out at the inquiry or even from the evidence led before charge. In these circumstances to add the charges were not only unwarranted but an abuse of the process of the court.

7. The expression 'add to' in Section 216 Cr.P.C. does not mean the addition of a few words to the existing charge but means the addition of a new charge. Similarly, errors can be remedied at any time during the course of the trial by invoking this Section (See *W. Slaney v. State* A.I.R. 1950 S.C. 116).

8. The only thing that the court is required to see is that when a charge is added or amended at a late stage the interest of the accused must be safeguarded by permitting him to cross examine such witnesses as he may like and at the same time giving him an opportunity to adduce evidence. It is also the duty of the Magistrate to further examine the accused under Section 313 Cr.P.C. with respect to the altered and amended charge.

9. Due regard being had to the facts and the circumstances of the case, I find no irregularity or illegality in the impugned order passed by the learned Magistrate as also the Revisional Court. The separate reasonings given by the Revisional Court for dismissing the revision and upholding the order of the learned Magistrate appear to be cogent and cannot be interfered with as that is another aspect which also has come to rescue of the learned Magistrate passing the impugned order. In the result, there is no merit in this application which is dismissed.