

**Genuiya Devi and Anr Vs. The State of Jharkhand and Anr**

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**Court :** Jharkhand

**Decided On :** Feb-26-2015

**Appellant :** Genuiya Devi and Anr

**Respondent :** The State of Jharkhand and Anr

**Judgement :**

IN THE HIGH COURT OF JHARKHAND AT RANCHI. Cr. M.P. No. 22 of 2014 ----  
1. Genuiya Devi, W/o Aditya Prajapati 2. Santosh Prajapati,s/o Aditya Prajapati,  
both R/o Sherpur.PO+PS & Distt. Chatra . Petitioners. Versus 1 State of  
Jharkhand 2. Smt. Puniya Devi, W/o of Hira Prajapati, R/o Sherpur.PO+PS & Distt.  
Chatra . Respondents. ----- CORAM : HON'BLE MR. JUSTICE PRASHANT  
KUMAR ----- For the Petitioners : Mr. Munna Lal Yadav For the Respondents : Mr.  
Vikash Kishore, Add.P.P. ----- Reserved on 16.01.2015 Delivered on 26/02/2015  
----- Prashant Kumar,J.

This application has been filed for quashing the order dated 03.09.2013 passed by  
learned Civil Judge-cum- Chief Judicial Magistrate, Chatra in Sadar P.S.case No.  
105/2013 corresponding to G.R.No.505/2013, whereby and where under, learned  
court below took cognizance of offence against the accused persons including the  
petitioners under sections 302/34 of the Indian Penal Code.

2. The facts of the case for the purpose of disposal of this case lie in a narrow  
compass: The informant Puniya Devi has alleged that on 08.06.2013, his son  
Dinesh Prajapati @ Dawlu was killed by Aditya Prajapati @ Lattu Prajapat, Madan

Prajapati and Santosh Prajapati (petitioner no.2) on the instigation of Geniya Devi. Accordingly, police instituted Sadar Chatra P.S. Case No. 105/2013 dated 09.06.2013, under sections 302/34 of the Indian Penal Code against the aforesaid four accused persons and took up investigation.

3. It appears that after completing the investigation, police submitted charge sheet only against Aditya Prajapati @ Lattu Prajapati and Madan -2- Prajapati. In the said charge-sheet petitioners were not sent up for trial. It further appears that aforesaid charge-sheet received in the court of learned Chief Judicial Magistrate, Chatra on 03.09.2013, who after going through the materials collected during the investigation, differs from the findings of the Investigating Officer and came to the conclusion that prima facie offence under section 302/34 I.P.C. made out against all the four accused persons, namely, Geniya Devi, Aditya Prajapati, Madan Prajapati and Santosh Prajapati, accordingly, he took cognizance of the offence against them. In this case, petitioners challenged aforesaid order of learned Chief Judicial Magistrate, Chatra.

4. It is submitted by learned counsel for the petitioners that petitioners were not charge-sheeted. It is further submitted that charge-sheet submitted only against two co-accused under sections 302/34 of the Indian Penal Code. Thus, the learned Chief Judicial Magistrate, Chatra has no power to take cognizance of the offence against the petitioners. It is submitted that if the learned Magistrate prima facie finds that there are material to proceed against the petitioners then he is required to commit the case to the Court of sessions and it is for the court of Sessions to take cognizance against them.

5. On the other hand, learned Addl.P.P. submits that in view of the Constitution Bench Judgment of the Hon'ble Supreme Court in "Dharam Pal and others. Vs. State of Haryana & Another, reported in 2014(3) SCC-306, the aforesaid point raised by the learned counsel for the petitioners is not available. It is submitted that in the aforesaid judgment, the Hon'ble Supreme Court has held that in the event, the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed or he may, while disagreeing with the police report, issue process and summon the accused. It is -3- submitted

that the Hon'ble Supreme Court further held that if the learned Magistrates finds that the case is triable by a court of Magistrate, then it can proceed with the trial or if it finds that the case is triable by the court of Sessions, then he may commit the case to the court of Sessions for trial. It is submitted that in view of the aforesaid judgment of Hon'ble Supreme Court there is no illegality in the impugned order. Hence, the application is liable to be dismissed.

6. Having heard the submissions, I have gone through the records of the case.

7. Admittedly, petitioners were named in the FIR along with other two co-accused. It further appears that police after investigation has not submitted charge-sheet against these petitioner. However, against two co-accused, namely, Aditya Prajapati @ Lattu Prajapati and Madan Prajapati, charge-sheet has been submitted under sections 302/34 of the Indian Penal Code. It appears from the impugned order that the learned Chief Judicial Magistrate, Chatra after going through paragraph nos. 7, 26,27,28 and 29 of the case diary concluded that prima facie case against these petitioners made out under sections 302/34 of the Indian Penal Code along with co-accused Aditya Prajapati and Madan Prajapati. Accordingly, the learned Chief Judicial Magistrate took cognizance of the aforesaid offences against all the four accused persons. The submission of learned counsel for the petitioners that when in a Sessions Case charge-sheet submitted, the Magistrate has no power to take cognizance can not be accepted. The Constitution Bench of the Hon'ble Supreme Court in Dharam Pal and others.Vs. State of Haryana & Another ( Supra ) has held as follow :- " In our view, the Magistrate has a role to play while committing the case to the court of Sessions upon taking cognizance on the police report submitted before him under section 173(2) Cr.P.C. In the event the Magistrate disagrees -4- with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfies that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Sessions to proceed further in the matter." 8. In view of the aforesaid law laid down by Their

Lordships of Hon'ble Supreme Court, there is no confusion that on receipt of police report , the Magistrate can disagree with the police report. After receiving the police report under section 173(2) of Cr.P.C. the learned Magistrate has two choices. Firstly, he may act on the basis of a protest petition filed by the informant or victim, or he may, while disagreeing with the police report, issue process and summon against the non-charge-sheeted accused. Thereafter, on being satisfied that the case has been made out, which is triable by a Court of Magistrate, he may proceed with the trial and if he finds that the case is triable by a Court of Sessions, then commit the case to the Court of Sessions. Thus, the aforesaid contentions raised by the learned counsel for the petitioners is worth rejectable.

9. In view of the aforesaid facts and circumstances, I find that there is no illegality in the impugned order, which requires no interference by this Court. Accordingly, this application is dismissed. ( Prashant Kumar, J.) Raman/

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