

Champa Devi Vs. State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Feb-19-2015

Appellant : Champa Devi

Respondent : State of Jharkhand and Anr

Advocate for Pet/Ap. : Mr. Mahesh Kumar Sinha

Judgement :

THE HIGH COURT OF JHARKHAND AT RANCHI Cr. M.P. No. 1626 of 2011 .. Champa Devi wife of Shri Kanchan Mandal resident of village Jasobandh P.O-Baskupi, P.S. Karon District Deoghar .. . Petitioner Versus 1. The State of Jharkhand 2. Sambhu Rawani son of Andari Rawani @ Chandi Rawani resident of village-Jaruwa, P.O-Joramou, P.S-Karon, District Deoghar .. . Opposite Parties CORAM: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY For the Petitioner : Mr. Sudhansu Kumar Deo, Advocate For the State : A.P.P. 06/ Dated 19th February, 2015 Heard learned counsel for the petitioner and learned counsel for opposite party no.2. In this application, the petitioner has prayed for quashing the order dated 24.01.2011 passed by the learned Judicial Magistrate Madhupur, Deoghar in P.C.R Case No. 357 of 2009 whereby and whereunder, the learned court below was pleased to take cognizance for the offence punishable under Section 376 of the Indian Penal Code as well as order dated 12.09.2011 passed in Cr. Rev. No. 9 of 2011 passed by the learned Sessions Judge Deoghar by which the order passed by the learned Judicial Magistrate, 1st Class dated 24.01.2011 has been affirmed and the revision has been dismissed. It appears that a

complaint case was instituted by the petitioner being the complainant, in which it was alleged that when she was going to her house the opposite party no.2 came there by his motorcycle and offered her to take lift and since she was acquainted with the opposite party no.2 she accepted the said offer. It has further been alleged that the opposite party no.2 proceeded and after some time he stopped his motorcycle and took another persons with them and ultimately when they reached near Primary School the opposite party no.2 told the petitioner to get down and thereafter opposite party no.2 and unknown persons committed rape upon the petitioner. During the course of inquiry, the petitioner was examined on solemn affirmation as well as her witnesses. Thereafter vide order dated 24.01.2011 the learned Judicial Magistrate, 1 st Class Madhupur, Deoghar took cognizance for the offence under Sections 323 and 354 of the Indian Penal Code but did not find prima facie case for the offence under Section 376 of the Indian Penal Code. This order was under challenge in Criminal Revision No. 9 of 2011. The Revisional Court was pleased to dismiss the said application vide order dated 12.09.2011 while upholding the order passed by the learned Judicial Magistrate, 1st Class Madhupur, Deoghar. It has been submitted by the learned counsel for the petitioner that the order dated 24.01.2011 does not reveal any reasons given by the Judicial Magistrate, 1st Class Madhupur, Deoghar, while not taking cognizance for the offence punishable under Section 376 of the Indian Penal Code. He has 2 further submitted that the learned court below did not apply its judicial mind and as such cognizance should have been taken for the offence under Section 376 of the Indian Penal Code against the accused persons including opposite party no.2. In this context, he relied on a judgment in the case of Mathew Abraham vs. Gopalakrishnan reported in [2008 (2) East Cr C509(Ker)]. Learned counsel for the opposite party no. 2 on the other hand has submitted that since none of the witnesses of the petitioner -complainant had supported the factum of rape committed upon the complainant and as such the learned Judicial Magistrate rightly came to the conclusion that no offence under Section 376 is made out against the opposite party no.2 which was rightly affirmed in revision. After hearing the learned counsel for the parties and after going through the records, I find that vide order dated 24.01.2011 detailed reasons were assigned by the Judicial Magistrate 1 st Class, Madhupur, Deoghar while refusing to take cognizance for

the offence punishable under Section 376 of the Indian Penal Code. It further appears from the said order dated 24.01.2011 that the witnesses were also examined on behalf of the complainant and that in fact the complainant has nowhere stated that P.W.3 Sita Ram Mandal was a witness to the occurrence. It further appears that the learned Magistrate has also considered the fact that P.W1 Saghar Mandal and P.W2Srivastava Mandal had also not stated the fact with respect to the factum of rape committed upon the complainant. So far as P.W4 is concerned he is the husband of the complainant and is a hearsay witness. The aforesaid facts have been taken into consideration by both the learned courts below while refusing to accept the plea of the petitioner. So far as the judgment cited by the learned counsel for the petitioner is concerned the same lays down that the Magistrate has to give reasons as to why he has not taken cognizance for the offence for which the complaint was filed. Apparently from perusal of the order dated 24.1.2011 it clearly transpires that the learned Magistrate has given sufficient reasons for not taking cognizance under Section 376 of the Indian Penal Code and no illegality can be found with the said order. The revisional court also considered the entire aspect of the matter in its proper perspective and also came to a finding that no offence under Section 376 has been made out. Accordingly since both orders are well reasoned orders and there being no illegality in the said orders this application being devoid of any merit is hereby dismissed. (Rongon Mukhopadhyay, J.) Anjali THE HIGH COURT OF JHARKHAND AT RANCHI Cr. M.P. No. 3493 of 2013 ..

1. Sattar Mian son of Hafij Mian 2. Fidaullah Mian @ Md. Fodaullah, son of Akhlakh Mian 3. Bholwa Oraon @ Bhola Oraon son of Charan Oraon 4. Kashi Mahto @ Kashi Yadav son of Raman Mahto 5. Dhatuna Ganjhu @ Dhatunga Ganjhu @ Chhatuma Ganjhu All are resident of village Jhimat Koma P.O and P.S. Balumath District latchar .. . Petitioner Versus The State of Jharkhand .. . Opposite Parties CORAM: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY For the Petitioner : Mr. Mahesh Kumar Sinha, Advocate For the State : Mr. T.N. Verma, A.P.P. 06/ Dated 19th February, 2015 Heard Mr. Mahesh Kumar Sinha, learned counsel for the petitioner and Mr. T.N. Verma learned counsel for the State. In this application, the petitioner has prayed for quashing the order dated 19.10.2012 passed by the learned Principal Sessions Judge, Latehar in N.D.P.S. Case No. 15

of 2010, whereby and whereunder the cognizance was taken for the offence punishable under Sections 15,18,22 and 27 of the N.D.P.S. Act. It appears that a first information report was instituted with the allegation that in village Shibla in course of raid, three acres of land were found cultivated with Posta (Afim) and the named accused persons had been seen cultivating the same for the purpose of sale. It has been stated that 100 pieces of plants were seized for the purpose of its verification. It has further been alleged that raiding party reached village Jhitar Koma and 2 acres of land cultivated with Posta were found and on enquiry, it was found that named accused persons have cultivated the same for the purpose of sale. On the basis of the aforesaid allegations, the prosecution had instituted a case against the petitioners. It appears that after investigation, the police submitted charge- sheet on 23.8.2010 against Ekram Mian, pursuant to which, learned Sessions Judge was pleased to take cognizance for the offence punishable under Sections 15,18,.22 and 27 of the N.D.P.S. Act and investigation was shown to be pending against the rest named accused persons including the present petitioners. In the said order dated 23.8.2010 there was a direction to split up the records against the accused persons against whom investigation was still pending. It further appears that subsequently on 19.10.2012 a final report was submitted being Final Form No. 88 of 2012 dated 30.9.2012 showing

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