

Dhruva Narayan Sinha and ors. Vs. State of Bihar and anr.

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Court : Jharkhand

Decided On : Feb-06-2001

Reported in : 2001(49)BLJR1598; 2001CriLJ2448

Judge : Deoki Nandan Prasad, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 107, 202 and 203

Appeal No. : Crl. Revision No. 116 of 1997 (R)

Appellant : Dhruva Narayan Sinha and ors.

Respondent : State of Bihar and anr.

Advocate for Def. : Sameer Saurabh and; Saurav Arun, Advs.

Advocate for Pet/Ap. : A. Sahay and; Mohit Prakash, Advs.

Disposition : Revision dismissed

Judgement :

D.N. Prasad, J.

1. This criminal revision application is directed against the order, dated 27.5.1997 passed by 4th Additional Sessions Judge, Hazaribagh, in Criminal Revision No. 97 of 1997, whereby and whereunder, the learned Additional Sessions judge set-aside the order of dismissal of complaint under Section 203 of the Code of

Criminal Procedure (the Code) passed by the Judicial Magistrate, 1st Class, Hazaribagh, on 18.3.1997 in Complaint Case No. 481 of 1996.

2. The short facts of the complaint case as alleged is that the complainant and the petitioners are co-sharers and are residing in different portions of the same house which is an ancestral property of both the parties. It is further alleged that on 1.9.1996 at about 9 a.m., the accused persons/petitioners forcibly entered into the house of the complainant of which the wife of the complainant protested and she also informed her husband, who was present at his medicine shop but the accused persons in the meantime started assaulting the wife of the complainant and also took away a box containing clothes and Rs. 5,000/-. The complainant and other witnesses also reached to the spot and saw the occurrence. Accordingly the complaint case was filed and enquiry was held under Section 202 of the Code. As many as five witnesses have been examined during enquiry but the learned Magistrate dismissed the complaint petition against which the complainant preferred revision before the Sessions Judge and after hearing both sides, the learned Additional Sessions Judge allowed the revision and remanded the matter for reconsideration to the trial Court by the impugned order.

3. Learned counsel appearing on behalf of the petitioners at the very outset submitted that the learned Additional Sessions Judge committed error in remanding the case to the trial Court when the trial Court has rightly dismissed the complaint case as no any independent or nearby witness has been examined to corroborate the story of assault or theft. It is also submitted that the allegation as made out is of civil nature and one partition suit is also pending between the parties and in order to harass the petitioners, this false case has been registered. It is further argued that a proceeding under Section 107 of the Code has already been initiated and the witnesses examined during enquiry are not reliable as they are outsiders. Learned counsel also relied upon the case of Pepsi Food Limited and another v. Special Judicial Magistrate and Ors., 1998 (1) East Cr C 171 (SC).

4. On the other hand, learned counsel appearing on behalf of opposite-party No. 2 contended before me that the Additional Sessions Judge has rightly remanded back the case to the trial Court for reconsideration as the trial Court dismissed the

complaint case on flimsy ground which cannot be sustained in the eyes of law. It is further argued that as many as five witnesses have been examined and they have supported the prosecution case but their evidence has been ignored by the trial Court. It is also argued that at this juncture the trial Court has only to see as to whether prima facie case is made out or not, but it has not been considered rather the trial Court dismissed the complaint case on the ground that no witness of the locality was examined and there is already a civil dispute between the parties which cannot be the basis for dismissal of the complaint case under Section 203 of the Code when there is overwhelming evidence about the occurrence and the witnesses examined are very much consistent.

5. It is true that as many as five witnesses have been examined during enquiry under Section 202 of the Code, of whom, PW 1 (Kiran Bhandari) is the wife of the complainant, who herself was the victim, but surprisingly enough, the trial Court did not consider the evidence of PWs. The Additional Sessions Judge observed in his order that five witnesses have supported the occurrence.

6. It is well-settled that at the stage of issuing processes, the Magistrate is mainly concerned with the allegation made in the complaint or the evidence led in support of the same and he is only to be satisfied whether there are sufficient ground for proceeding against the accused. It is not the province of the Magistrate to enter into detailed discussion of the merits or demerits of the case. It is limited only to ascertained of falsehood of the allegation made in the complaint--(i) on the material placed by the complainant before the Court, (ii) for the limited purpose of finding out whether a prima facie case for issuance of processes has been made out, and (iii) for deciding question particularly from the point of view of the complainant without at all adverting to any defence that the accused may have.

7. From going through the materials on record, it is evident that the Additional Sessions Judge while considering the revision also gone through the evidence of the witnesses as he has already held that five witnesses have supported the occurrence. The facts of M/s. Pepsi Food Limited case was quite different from the facts of the present case. It is true that summoning of accused in a criminal case is serious matter but the accused should not go scot-free if there is sufficient

evidence against them.

8. Having regard to the facts and circumstances of the case, I find that the learned Additional Sessions Judge has rightly passed the order impugned which does not require to be interfered with.

9. In the result, I do not find any merit in this criminal revision application which is, accordingly, dismissed.

10. Revision dismissed.

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