

Tula Devi and ors. Vs. the State of Jharkhand and anr.

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Court : Jharkhand

Decided On : Apr-18-2006

Reported in : [2006(3)JCR222(Jhr)]

Judge : D.K. Sinha, J.

Acts : Prevention of Witch(Daain) Practice Act, 1999 - Sections 3, 4 and 5; Code of Criminal Procedure (CrPC) - Sections 107 and 482; Indian Penal Code (IPC) - Sections 147, 323, 341 and 379

Appeal No. : Cr.M.P. No. 766 of 2004

Appellant : Tula Devi and ors.

Respondent : The State of Jharkhand and anr.

Advocate for Def. : A.P.P. and; H.K. Jha, Adv. for O.P. No. 2

Advocate for Pet/Ap. : P. Chatterjee, Adv.

Disposition : Petition dismissed

Judgement :

D.K. Sinha, J.

1. The petitioners 8 in number have preferred this petition under Section 482 Cr.P.C. for quashing of entire criminal proceeding arising out of Complaint Case

No. 1156/2003 including the impugned order dated 5.2.04 passed by Shri R.K. Mishra, Judicial Magistrate, 1st Class, Dhanbad.

2. A Vakalatnama has been filed on behalf of the O.P.No. 2, Sakuntala Devi suo motu.

3. The brief fact of the case is that O.P.No. 2 Sakuntala Devi filed a Complaint Petition No. 1156/03 as against the petitioners and two others alleging inter alia that in the morning of 8.9.2003 petitioners came to her house armed with sticks and started abusing the complainant and in spite of her protest made they entered into her house and assaulted her. It is further alleged that the petitioners used to call and address her as a Daain for the last two years and it was further threatened that a Daain would not be allowed to live there. On the petition filed earlier by the Complainant O.P.No. 2 a proceeding under Section 107 Code of Criminal Procedure was initiated against the petitioners vide M.P.Case No. 63/03 in the Court of S.D.M., Dhanbad. With reference to the occurrence dated 8.9.2003 it was further alleged that when her husband came to rescue her, he was also assaulted by the petitioners and with the intervention of the witnesses the complainant was rescued from being more assaulted. It was further alleged against the petitioner Gobardhan Mahto that he had snatched the chain from the neck of the complainant made of gold worth Rs. 7,000/- with extending threat that in case of instituting a case she as well as her husband would be killed. Pronouncing her Daain by the petitioners all the time caused her mental agony and it was difficult for her to live in such a society.

4. After the statement of the complainant O.P.No. 2 on solemn affirmation the record was transferred to the another Court and after due enquiry cognizance of the offence was taken by Shri R.K. Mishra, Judicial Magistrate, 1st Class, Dhanbad. After finding a prima facie offence under Section 147, 323, 341 I.P.C. as well as under Sections 3/5 of the Prevention of Witch(Daain) Practice Act, 1999, the cognizance was taken by order impugned against the petitioners. The learned Counsel submitted that there were provisions for only 4 Sections and in the Prevention of Witch (Daain) Practice Act, 1999 but the court below erroneously and in mechanically manner took the cognizance of offence under Section 5 of the

Act. After came into being of the Bihar Act, 1999 which extends to whole of the Bihar State, the offences have been made cognizable and non-bailable and cognizance under Section 5 of the said Act is illegal and abuse of the process of Court.

5. Advancing his argument learned Counsel submitted that the word Daain (Witch) has been defined in the Act, means a woman who has been identified as a witch by some one else having power of intention of harming any person, through the art of black magic, evil eyes or Mantras and it is deemed that she would cause harm in any way to other person/persons or the community at large. In any manner it is nowhere alleged in the complaint petition that the complainant had possessed black magic having power or intention of harming any person through her evil art or that she had in any manner harmed any person or society and therefore, cognizance under Section 4 of the said Act is also uncalled for and illegal.

6. Advancing his argument learned Counsel submitted that prior enmity prevailing between the parties in view of the proceeding under Section 107 of the Code of Criminal Procedure vide M.P. Case No. 63/03 cannot be ruled out and it was nowhere alleged in the said proceeding against the petitioners that at any point of time they had addressed the complainant as Witch (Daain) and that the said proceeding was initiated on account of brick bating. Similarly a Title (Partition suit No. 66/98) between the parties is pending in the Court of Sub-Judge, Dhanbad in which the husband of the complainant is the co-defendant along with the petitioners male members and admittedly the husband of the complainant and the male members amongst the petitioners are agnates and the present case was brought about maliciously to put undue pressure and therefore cognizance of the offence against them is illegal and if the prosecution of the petitioner would be allowed to continue, it would occasion failure of justice.

7. Having regard to the facts and circumstances, perusal of the complaint case, it is evident that the complainant was addressed by the petitioners as Daain but at the same time it was nowhere alleged in any manner that she had acquired such a black power to do harm to others or that she had in any manner caused harm to others. Her allegation is based upon speculation that pursuant to certain diseases

of a son of the petitioner Gobardhan Mahato they used to say her Daain but subsequently child came round and now the boy was free from any disease. To substantiate the allegation of Daain the burden is upon the complainant to prove that she was alleged by the accused persons in such a manner as is contained in the definition of Daain in the Prevention of witch (Daain) Practices Act, 1999 and therefore, the Court finds that the cognizance of the offence under Section 4 of the said Act is illegal against the petitioners and under Section 5 not maintainable since there is no provision as such in the Act.

8. The Court further finds prima facie that there is persistent dispute between the parties and there was allegation against the petitioners of assaulting the complainant and her husband after wrongfully restraining them and no cognizance has been taken under Section 379 I.P.C. being found false in enquiry as the allegation made in the complaint case.

9. Keeping in view the prior land dispute as well as a proceeding under Section 107 Cr.P.C. between the parties before the institution of the complaint case it would not be proper to entertain the petition filed on behalf of the petitioners under Section 482 Cr.P.C. for quashing the cognizance Under Section 147/323/341 of Indian Penal Code.

10. This petition is dismissed with above observation but the cognizance for the offence Under Section 4/5 of the Prevention of Witch (Daain) Practice Act, 1999 is quashed.