

Dharmendra Kumar @ Anil Kumar Vs. State of Jharkhand

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SooperKanoon Citation : sooperkanoon.com/517603

Court : Jharkhand

Decided On : Mar-28-2006

Reported in : [2006(3)JCR96(Jhr)]

Judge : D.K. Sinha, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 164, 313 and 482;
[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 363, 366, 366A and 376

Appeal No. : Cri. M.P. No. 1099 of 2004

Appellant : Dharmendra Kumar @ Anil Kumar

Respondent : State of Jharkhand

Advocate for Def. : A.P.P.

Advocate for Pet/Ap. : Pandey Neeraj Rai, Adv.

Disposition : Petition dismissed

Judgement :

D.K. Sinha, J.

1. The petitioner Dharmendra Kumar @ Anil Kumar has preferred this petition under Section 482, Cr PC for setting aside the order impugned dated 17.8.2003 passed by Shri M. Mahto, Additional Judicial Commissioner, F.T.C., Ranch! in

Sessions Trial No. 544/02 at the fag end of the trial when the judgment was to be pronounced.

2. It has been submitted on behalf of the petitioner that the order impugned was passed on the date when it was fixed for the delivery of the judgment after conclusion of the trial. After examination of the prosecution witnesses the accused persons including the petitioner were examined under Section 313, Cr PC and after entering into the defence three witnesses were produced and examined on behalf of the defence.

3. The brief fact of the case related to Hatia P.S. Case No. 84/02 corresponding to G.R. No. 1065/2002 was that the informant Kameshwar Prasad Singh had brought about the case for the offence under Sections 366/363/376, IPC against the petitioner that the latter was found missing with the daughter of the informant namely Sweta Kumari since mid-night on 17.4.2002 and the fact of said missing was conveyed to him by a neighbour girl Lakshmi Kumari. The girl was rescued on 17.4.2002 from Quarter No. D.T. 2242 and the petitioner thereafter was arrested, the owner of the said quarter was also arrested. The statement of the victim girl was recorded under Section 164, Cr PC in which she had disclosed her age being 14 years only and disclosed that rape was committed on her against her will. The police after investigation submitted charge-sheet against the petitioner and another for the offence under Sections 366/376/34, IPC. It is stated that the charge under Section 376, IPC was framed against the petitioner in one head and separate charge under Section 366-A/34, IPC was framed against both the accused.

4. Learned Counsel submitted that the order impugned was not based upon the submission on behalf of the prosecution rather it was drawn suo motu by the trial Court. The extract of the relevant portion of the order impugned dated 17.8.2004 is hereunder,' On perusal of the charge-sheet and the case diary and the case record it is evident that in this case charge-sheet was submitted under Section 366/376/34, IPC. There are evidences available and there are also prima facie evidences in the case diary also for framing of charge under Section 366/34 and 376, IPC but due to some inadvertence while framing of the charge, which was

framed under Section 366-A/34, IPC. Hence for the ends of justice it is necessary to amend charge framed on 9th December, 2003.

5. From perusal of the order impugned dated 17.8.2004 as a whole there appears that though charge-sheet was submitted under Section 366/376/34, IPC the charge could be framed against both the accused under Section 366-A/34, IPC and separately against the petitioner under Section 376, IPC. The trial Court in its own wisdom thought it proper to amend the charge converting Section 366-A/34, IPC into one under Section 366/34 for bringing about accuracy in framing of charge with the assurance on behalf of the Additional P.P. that he would produce all the prosecution witnesses, earlier examined, after the amendment of charge for their cross-examination on behalf of the defence (petitioner). It is settled principle of law that the charge may be amended at any stage of trial and in the present case this Court finds that no prejudice is caused to the petitioner since A.P.P. conducting the case has assured to produce all the prosecution witnesses after the amendment of charge.

6. Therefore, there appears no illegality in the order impugned dated 17.8.2004 passed by the Additional Judicial Commissioner, F.T.C., Ranchi in Sessions Trial No. 544/02.

This petition stands dismissed.