

Devi B. Parikh Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jan-12-2007

Reported in : [2007(4)JCR625(Jhr)]

Judge : D.K. Sinha, J.

Appellant : Devi B. Parikh

Respondent : State of Jharkhand

Disposition : Petition allowed

Judgement :

ORDER

D.K. Sinha, J.

1. The petitioner, Devi B. Parikh has preferred this Criminal Revision application against the order impugned dated 6.5.2004 passed by the Additional Sessions Judge, F.T.C. VII, Jamshedpur in S.T. No. 14 of 2004 arising out of Bistupur P.S. Case No. 229 of 2000 whereby and whereunder the prayer of the petitioner for her discharge was rejected.

2. The prosecution story in brief is that the informant, Devgam Ram delivered his statement before Bistupur Police at M.G.M. Hospital, Emergency Ward at bed No. 6 on 18.11.2000 at about 17.45 hours that on 17.11.2000 he had been to Mihtila

Motors Ltd. to attend his duty where he was assigned work to deposit a sum of Rs. 2,30,000/- of the company. He took the same amount and came to Adityapur Branch of Punjab National Bank where he deposited Rs. 52,000/- and with the remaining amount he came to Bistupur Branch of certain bank for deposit. He further narrated that while he was checking the voucher slips at about 12.30 noon at the receipt counter, a person come near him and attracted his attention that some notes were lying on the ground. As soon as he leaned on the ground the person took his bag and fled away from the gate. Though he raised and no sooner did he arrived at the gate the unknown person had already escaped. He lodged a First Information Report at the Bistupur Police Station. He further alleged that on 17.11.2000 at about 12 O'clock noon one Sumit Guha, General Manager and another Rajesh Agarwal Accountant, both of Regent Hotel along with 4/5 persons took him to a room of Regent Hotel and asked him to confess his guilt that he had misappropriated the amount and assaulted him brutally and thereafter drop him at his home extending threat not to disclose the matter to the police. However, he was taken to the M.G.M. Hospital by his brother and got him admitted for treatment.

3. On the basis of the fardbeyan a case for the offence under Section 342/323/34 of the Indian Penal Code was registered and subsequently Section 325/326/307 was added in the FIR. After investigation the police charge-sheet against the petitioner and others under the aforesaid sections of the IPC. The CJM took cognizance of the said offence and committed the case to the Court of Sessions Judge, Jamshedpur.

4. Mr. S.L. Agarwal, learned Counsel submitted that the case was originally instituted against Sumit Guha, Rajesh Agarwal, Senior Executives of Regent Hotel and 4/5 unknown persons. In his fard-beyan before the police the informant did not reveal the complicity of the petitioner regarding her involvement in the alleged offence and even during the investigation the police had examined five witnesses on behalf of the prosecution but no overt act was attributed against the petitioner by any of the witnesses. Advancing his arguments Mr. S.L. Agarwal submitted that the petitioner is an infirm and rich lady and in order to extract some money, the informant implicated her in his restatement that only on her instruction he had

gone to Regent Hotel as she had communicated to him that he would be interrogated by Sumit Guha and pursuant to such instruction he had visited Regent Hotel where he was assaulted by the accused persons by putting pressure to confess his guilt admitting misappropriation of the balance amount. The injuries of the informant was examined at MGM Hospital, Jamshedpur and as many as six multiple bruises were found on him caused by hard and blunt substance within 48 hours and all the injuries were simple in nature.

5. The police after investigation submitted charge-sheet for the offence under Section 307 of the Indian Penal Code which is not at all attracted against the accused persons under the facts and circumstances of the case. Had there been intention of the accused persons, if the prosecution case and statement of the informant under Section 161, Cr PC is admitted to be true for the argument sake there was no intervening circumstances for the informant from being killed. Simple injuries found on the person of the informant is in the nature of bruises which simply attracts the offence under Section 323 of the Indian Penal Code but the learned Additional Sessions Judge without appreciating the application of Judicial mind rejected the prayer of the petitioner for her discharge under Section 227 of Code of Criminal Procedure though there was no material at all against her except the solitary statement of the informant. By filing the supplementary affidavit the learned Counsel further submitted that the petitioner Devi B. Parikh is neither the Director nor the employee of the Regent Resorts Pvt. Ltd. and similarly she is neither the Director nor the employee of M/s. Mithila Motors Pvt. Ltd. so as to attract her interest in the money being snatched away from the possession of the informant and therefore her involvement in the instant case was for oblique/ motive.

6. Having regard to the facts and circumstances of the case I find that by the order impugned though the learned Sessions Judge rejected the prayer of the petitioner for her discharge under Section 227 of the Code of Criminal Procedure but at the same time I find that the learned Sessions Judge failed to find out prima facie case against the petitioner as to for which offence she is liable to be charged. On the other hand the learned Court below has almost decided the case by the order impugned and to quote:

From perusal of the case diary there appears that Devi B. Parikh had advised the informant to go Regent Hotel for the reason that accused persons would en-/ quire into the matters when the informant went to the place of occurrence, accused persons have assaulted him. Although Devi B. Parikh was not present there but there is a circumstance considering as to why Devi Parikh had advised the informant to go at Regent Hotel. Thus from the perusal of diary as well as statement made by the informant, it is crystal clear that the informant went to the place of occurrence only due to the instruction given by Devi B. Parikh. Thus it may be presumed that she is master mind behind the occurrence for the reason that she had given advise to the informant to go to the place of occurrence. So far as the offences are concerned as mentioned in the charge-sheet no overt act was done by Devi B Parikh that she may be a conspirator behind the occurrence.

7. I am constrained to observe that the Teamed Court below ha erroneously passed the impugned order by presuming the petitioner guilty. What a Court is required to see as to whether prima facie case is made out against the accused for the alleged charge on the materials available on record or not but in the instance case the Court below did not follow the procedural law as contained in Sections 227/228 of the Code of Criminal Procedure.

8. For the aforesaid reason the order impugned passed on 6.5.2004 in S.T. No. 14 of 2004 is set aside with the direction to the Additional Sessions Judge, F.T.C. VII Jamshedpur to pass a speaking order on the petition of the petitioner under Section 227, Cr PC in accordance with law.

With the aforesaid observation this petition is allowed. Let the case diary of Bistupur P.S. Case No. 229 of 2000 be returned back to the Court concerned.