

Binay Kumar Jha and ors. Vs. State of Bihar and anr.

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Court : Jharkhand

Decided On : Jul-10-2002

Reported in : II(2002)DMC553

Judge : Deoki Nandan Prasad, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 202, 203 and 204

Appeal No. : Criminal Miscellaneous No. 9639 of 2000

Appellant : Binay Kumar Jha and ors.

Respondent : State of Bihar and anr.

Advocate for Def. : Md. Hatim, Addl. P.P.

Advocate for Pet/Ap. : T.R. Bajaj and; V.K. Tiwari, Advs.

Disposition : Application allowed

Judgement :

ORDER

Deoki Nandan Prasad, J.

1. This application has been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') for quashing the order dated

7.3.2000 passed by the Sub-Divisional Judicial Magistrate, Godda, in P.C.R. Case No. 585 of 1995/T.R. No. 905 of 2000 (G.R. Case No. 602 of 1998) whereby and whereunder the learned Magistrate passed the order for issuance of summons against the petitioners to face the trial in the aforementioned case which was registered under Sections 302/34 of the Indian Penal Code.

2. The prosecution case in brief as alleged is that the opposite party No. 2 was posted as a Teacher in J.K. High School, Raj Mahal and he married his daughter Putul in the year 1989 with Binay Kumar Jha and after the marriage, the mother-in-law, father-in-law and the husband started demanding money and also torturing his daughter. His son-in-law demanding a sum of rupees twenty thousand and due to non-fulfilment of the said demand, they started torturing her. It is further alleged that on 7.7.1998 at 4.30 p.m. Mr. S.N. Mishra son of Bishun Mishra and Shashi Kant Mandal came to Raj Mahal and informed opposite party No. 2 that her daughter has received some burnt injury by Stove and so he should go to. Dr. P.N. Jha where she was being treated. Thereafter the opposite party No. 2 came to Pathargama where he was informed that her daughter breathed her last and his son-in-law had gone for post-mortem with the police. Thereafter the first information was registered. The police investigated into the case and submitted final report which was accepted by the learned Chief Judicial Magistrate on 16.7.1999. Thereafter a protest petition was filed on 10.9.1999 in the Court of the Chief Judicial Magistrate. An inquiry under Section 202 of the Code was made but the learned Magistrate passed the order impugned for issuance of summons against the petitioners by going through the evidence collected during inquiry as well as the evidence contained in the police diary, whereas the police submitted final report after finding and being satisfied that there is no material for issuance of summons against the petitioners.

3. Mr. T.R. Bajaj, learned Counsel appearing on behalf of the petitioners at the very outset submitted that the learned Court below committed gross error in taking cognizance of the offence against the petitioners on the face of the evidence of the diary of which the learned Magistrate is not empowered to look into the diary when the final form has already been accepted on an inquiry made under Section 202 of the Code by the Magistrate and, therefore, the learned Magistrate should have

confined his order on the basis of the materials collected during the said inquiry, but he acted without jurisdiction by relying upon the evidence of the police diary. In support of his contention, Mr. Bajaj relied upon a Division Bench judgment of the Patna High Court in *Ram Kumar Pandey v. The State of Bihar & Am.*, 1979 BBCJ 293.

4. Obviously police case was registered and after investigation final report was submitted which was accepted on 16.7.1999 by the learned Chief Judicial Magistrate. It is also apparent that U.D. Case was registered for unnatural death on the basis of Sanha No. 152 dated 7.7.1999 on the application of Binay Kumar Jha, petitioner No. 1 whereas the father of the deceased also lodged a First Information Report and finally the police investigated into the matter in detail and thereafter the final form was submitted finding that neither it was a case of suicide nor a case of murder rather it was an accidental death. However, a protest petition was filed as well as an inquiry under Section 202 of the Code was also made but from going through the impugned order, it is apparent that the learned Magistrate also considered the evidence of the police diary in passing the order impugned, but the Magistrate cannot look into the police papers for the purpose of summoning the accused when the Magistrate already held an inquiry under Section 202 of the Code.

5. Section 203 of the Code reads as under :

'Dismissal of complaint-If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.'

6. Section 204 of the Code reads as under :

Issue of process-(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceedings, and the case appears to be-

(a) a summons case, he shall issue his summons for the attendance of the accused, or

(b) a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.'

7. Thus in view of the unambiguous language of Section 203 of the Code, it is clear that it is not open to the Magistrate concerned to peruse the police papers and the statements recorded by the police during investigation. Likewise for issuance of summons to the accused as required under Section 204 of the Code, the Magistrate is also not permitted to look into the police papers and the statements recorded during investigation which preceded the filing of the petition of complaint. The Magistrate has to be confined in his order only as regards to the evidence collected during inquiry under Section 202 of the Code. In the instant case, the final form submitted by the police after due investigation was already accepted and, as such, the matter as regards to the police investigation was already closed. However, the Magistrate was empowered amply to go through the evidence and materials collected during inquiry under Section 202 of the Code and after perusing the said evidence, the Magistrate can issue summons against the accused if he finds sufficient grounds for proceeding against the accused as the Magistrate is only to be satisfied about the materials/evidences collected during inquiry; whether there are sufficient grounds for proceeding against the accused.

8. Thus, I find that the Magistrate by looking into the police papers for the purpose of summoning the accused has acted without jurisdiction which is liable to be quashed. The Magistrate has to apply his mind only to the materials produced in connection with the complaint case during inquiry under Section 202 of the Code. In such situation, there appears no option but to hold that the learned Magistrate committed error in passing the order for summoning the petitioners by perusing the case diary.

9. In the result, I allow this application, quash the order impugned dated 7.3.2000 and the matter is remitted back to the learned Magistrate for the order afresh in

accordance with law relying on the materials which brought on the record in connection with the complaint case.

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