

Photo Devi Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Sep-02-2015

Appellant : Photo Devi

Respondent : State of Jharkhand

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr.M.P No. 990 of 2008
With I.A No.1512 of 2010 Photo Devi ... Petitioner Versus 1. The State of
Jharkhand 2. Binay Kumar Singh ... Opposite Parties ----- CORAM : HONBLE
MR. JUSTICE H. C. MISHRA ----- For the Petitioner : Mr. Vijoy Pratap Singh, Sr.
Advocate. Mrs. Rashmi Kumar, Advocate Mr. Ashok Kumar Sinha, Advocate For
the State : A.P.P. For the Opp.Party No.2 : Mr. Dhirendra Kr. Deo, Advocate -----
6/02.09.2015 Heard learned counsel for the petitioner and learned counsel for the
State, as also learned counsel for the opposite party No.2.

2. The petitioner has filed this application for quashing the entire criminal
proceeding against her in Sadar P.S Case No. 543 of 2006, corresponding to G.R
Case No. 3011 of 2006, including the order dated 04.7.2007 passed by the
learned Chief Judicial Magistrate, Hazaribagh, taking cognizance for the offence
under Sections 406 and 420 of the Indian Penal Code against the petitioner. The
petitioner has also challenged the order dated 02.6.2008 passed by Sri S.K.
Dubey, learned Judicial Magistrate, Hazaribagh, in the said case, whereby, the
application filed by the petitioner for discharge was rejected.

3. The facts of the case lie in a short compass. The complaint case was filed by the opposite party No.2 in the Court of the learned Chief Judicial Magistrate, Hazaribagh, in which, the petitioner has been made accused. It is alleged in the complaint petition that the petitioner along-with her husband had approached the complainant for taking loan of rupees three lakhs, which was advanced by the complainant by way of two cheques in the name of the husband of the petitioner. It is also alleged in the complaint petition that the husband of the petitioner had assured to refund the loan amount within a period of two months and he had also given two cheques to the complainant by way of security. Subsequently, the loan amount was not returned back and the cheques, which were given as security by the husband of the petitioner, were produced before the bank for payment, but the same were dishonored for insufficiency of fund on 10.4.2005. The complainant also sent the notice to the husband of the petitioner, which returned with the endorsement that he had died. Thereafter, the complaint was filed by the complainant against the petitioner, -2- which was registered as Complaint Case No. 989 of 2006. The said complaint was sent for institution of the police case, on the basis of which, Hazaribag Sadar P.S Case No. 543 of 2006, corresponding to G.R No. 3011 of 2006 was instituted and investigation was taken up.

4. It appears from the impugned order dated 04.7.2007 passed by the learned Chief Judicial Magistrate, Hazaribagh, that after investigation, the police submitted charge-sheet against the petitioner for the offence under Sections 406 and 420 of the Indian Penal Code and accordingly, the cognizance was taken against her. The petitioner had also filed application for discharge, which was also rejected by Sri S.K. Dubey, learned Judicial Magistrate, Hazaribagh by the order dated 2.6.2008, which has also been challenged in the present case.

5. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case and whatever transaction was there, was between her late husband and the complainant, in which, the petitioner was nowhere involved. The cheques, which were issued by the complainant, were in the name of the husband of the petitioner and the cheques said to be issued to the complainant as security, were also issued by the husband of the petitioner. It is, further, submitted that no notice whatsoever was given to the petitioner, rather the

notice was given to the husband of the petitioner, which was returned back with the endorsement that he had died. Learned counsel for the petitioner accordingly, submitted that no offence can be said to be made out against the petitioner for the offence under Sections 420 and 406 of the Indian Penal Code as there was no entrustment of any money to the petitioner.

6. Learned counsel for the State, as also learned counsel for the complainant informant have opposed the prayer. It is submitted by the learned counsel for the complainant informant that there is specific allegation against the petitioner also that she had also accompanied her husband when the money was advanced by the complainant, which was not being refunded. Learned counsel accordingly, submitted that on the basis of the allegation made in the complaint petition, the offence is clearly made out against the petitioner and there is no illegality in the impugned orders either taking cognizance against the petitioner or refusing the prayer of the petitioner for her discharge. It is also submitted that there can be no interference in the criminal proceeding against the petitioner, at this stage.

7. Having heard the learned counsels for both the sides and upon going through the record, I find that the complaint petition clearly shows that the cheques, which were issued by the complainant, were in the name of the husband of the petitioner. It is also apparent from the complaint petition that -3- cheques by way of security were also issued by the husband of the petitioner and not by this petitioner. It is further apparent from the complaint petition that when the complainant learnt that the husband of the petitioner died, the complaint case has been filed against the petitioner. However, the fact remains that admittedly, there was no entrustment of any money to the petitioner and admittedly, the entrustment of money, if any, was with the late husband of the petitioner.

8. In that view of the matter, I am of the considered view that no offence can be said to be made out against the petitioner for the offence under Sections 420 and 406 of the Indian Penal Code, even if the entire allegation made in the complaint petition against the petitioner is accepted. Even otherwise, it is apparent from the complaint petition that the petitioner has been made accused in this case only, as the complainant found no other way to realise his money without implicating the

petitioner.

9. Hence, I am of the considered view that this is a fit case for exercise of the inherent Power under Section 482 of the Code of Criminal Procedure to quash the criminal proceeding against the petitioner to secure the ends of justice, as also to prevent the misuse of the Process of the Court. Accordingly, the entire criminal proceeding against the petitioner in Hazaribagh Sadar P.S Case No. 543 of 2006, corresponding to G.R Case No.3011 of 2006, including the orders dated 04.7.2007 & 02.6.2008 passed therein, are hereby, quashed. This application accordingly, stands allowed. Consequently, the interlocutory application, being I.A No.1512 of 2010 which has been filed for stay of further proceedings in the Court below, also stands disposed of. (H. C. Mishra, J.) BS/

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