

Kalimuddin and Ors Vs. The State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Sep-10-2015

Appellant : Kalimuddin and Ors

Respondent : The State of Jharkhand and Anr

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Revision No.1181 of 2014 ----- 1. Kalimuddin Ansari, S/o Late Khatir Mian 2. Shamshewr Ansari, S/o Late Khatir Mian 3. Altu Ansari, S/o Late Khatir Mian 4. Rafiq Ansari, S/o Kalim Ansari 5. Manjhla Ansari 6. Munna Ansari Both S/o Kalimuddin Ansari 7. Asirapa Bibi W/o Kalimuddin Ansari 8. Aslima Bibi, W/o Shamshewr Ansari All R/o Village & P.O.- Bhitia, P.S. Govindpur, District- Dhanbad Petitioners Versus 1. The State of Jharkhand 2. Shahid Ansari, S/o Gedu Mian, R/o Village & P.O.- Bhitia, P.S. Govindpur, District- Dhanbad ----- CORAM: HON'BLE MR. JUSTICE RAVI NATH VERMA For the Petitioners : Mr. Milan Kumar Dey, Sr. Advocate Ms. Leena Mukherjee, Advocate For the State : A.P.P. For the O.P.No.2 : Mr. Sanjay Prasad, Advocate ----- C.A.V. ON:

15. 07.2015 PRONOUNCED ON:- 10.09.2015 The petitioners have questioned the legality of the order dated 21.11.2014 passed by learned Additional Sessions Judge-V, Dhanbad in Cr. Revision No.132 of 2013 whereby and whereunder the revisional court has directed the trial court to alter the charge on the basis of the material available on record by giving sufficient opportunity to the accused petitioners to defend themselves.

2. At the instance of the present opposite party no.2, who was complainant before the trial court, a complaint was filed under Sections 147/148/149/452/354/323/379 of the Indian Penal Code and also under Sections 3 & 4 of Prevention of Witch (Daain) Practices Act, 1999 with the allegation that on 21.07.2008 at 8.00 p.m. the petitioners armed with deadly weapons entered into his house and abused him and his wife Shahidan Bibi to whom they were calling witch and alleged that she makes their children sick and one of the petitioner-Kalimuddin Ansari hold the wife of the complainant with her hair and thrashed her on 2 Cr. Revision No.1181 of 2014 ground and directed other accused persons to cause her drink human waste. Thereafter all the petitioners assaulted his wife with kicks. Another accused Rafiq Ansari torn the blouse of his wife and accused Manjhla Ansari snatched her silver chain from the neck. Munna Ansari snatched her golden ear tops and they all threatened the complainant and his wife to leave the village otherwise they would be killed.

3. The learned Magistrate after examining the complainant on solemn affirmation and other witnesses, took cognizance of the offence under Sections 323 and 379 of the Indian Penal Code. Before framing of charge, witnesses were examined and considering the allegations and evidences available on record, the court below framed the charge against the petitioners under Sections 323 and 379 of the Indian Penal Code only. It further appears that after examination of all the witnesses, the complainant filed a petition under Section 216 of the Code of Criminal Procedure (hereinafter referred to as the Code) before the trial court with a prayer to amend the charge as there are sufficient evidence on record to frame charges against the accused under Sections 354 and 452 of the Indian Penal Code and also under Sections 3 & 4 of Prevention of Witch (Daain) Practices Act, 1999. The trial court after hearing both the parties and examining the evidence available on record rejected the prayer vide order dated 22.05.2013 holding that after completion of examination of all the witnesses of the complaint, the case was fixed for argument and in that condition the addition of charges is not at all justifiable. The complainant being aggrieved by the said order, preferred a revision. The revisional court by order impugned dated 21.11.2014 directed the trial court to alter the charge on the basis of the material on record by giving sufficient opportunity to the accused persons to defend themselves. Hence, this

revision.

4. Learned counsel appearing for the petitioners while assailing the order impugned as perverse and bad in law, seriously contended that since the trial court on consideration of broad probabilities of the case based upon total effect of the evidence was satisfied that any addition or alteration of charges was not required, the interference by the 3 Cr. Revision No.1181 of 2014 revisional court in that finding is bad in law and beyond the jurisdiction of that court. It was also submitted that the instant case was instituted in the year 2008 and the only intention of the complainant was to delay the disposal of the complaint petition so as to pressurize the petitioners to settle the counter case lodged at the instance of the petitioners against that complaint. In that circumstance addition of charges were not only unwarranted but an abuse of process of the court.

5. Contrary to the aforesaid submissions, learned counsels appearing for the opposite party and the State submitted that the Section 216 of the Code clearly stipulates and gives ample power to the court below to alter charges or add charges at any time before judgment is pronounced and the revisional court, after finding sufficiency of material and evidences on record, rightly directed the trial court to alter the charge. It was also submitted that even from bare reading of the complaint petition and the statement of the complainant recorded on solemn affirmation and other witnesses, it is abundantly clear that almost all the witnesses have fully supported the complainants case and there is sufficiency of material to constitute offences under Sections 354 and 452 of the Indian Penal Code and also under the provisions of Prevention of Witch (Daain) Practices Act, 1999 and there is no merit in this revision application.

6. Section 240 of the Code deals with the framing of charge during trial of a warrant case by Magistrate. Section 216 of the Code clearly stipulates that any court may alter or add to any charge at any time before the judgment is pronounced and whenever such alter or addition is made, the same is to be read out and informed to the accused. Besides that Section 217 of the Code gives ample opportunity to the accused persons to recall or re-summon and examine with reference to such alteration or addition, any witness even if the alteration or

addition does not affect the defence. If during trial the court finds on consideration of broad probabilities of effect of the evidence that there is sufficient evidence to alter or add charges, the court is free to do so and there can be no legal bar. I have gone through the depositions of almost 4 Cr. Revision No.1181 of 2014 all the witnesses available in the lower court records and I find that even in the complaint petition there is allegation to outrage the modesty of the complainant-wife and allegation to constitute offence under Sections 3 & 4 of Prevention of Witch (Daain) Practices Act, 1999. Besides that, the complainant and other witnesses examined during enquiry and before framing of charge, have all testified and corroborated those allegations but surprisingly the trial court framed the charges only under Sections 323 and 379 of the Indian Penal Code. It is true that the complainant had ample opportunity to raise the question even before examination of all the witnesses after charge but it appears that only after examination of those witnesses after charge, the petition under Section 216 was filed. It is well settled that the court has every jurisdiction to alter or add the charges at any stage before the judgment is pronounced but the trial court by order dated 22.05.2013 ignoring the mandate of Section 216 of the Code by order dated 22.05.2013 held that since the complaints witnesses have already been examined and the case has been fixed for recording the statement of accused, at this stage it is not justifiable to make any alteration or addition in the charges already framed. In my opinion, it cannot be said to be a good ground to reject the prayer. The appellate court considering the evidences available on record and considering the mandate of Section 216 of the Code, has rightly directed the trial court to alter the charge on the basis of the materials available on record by giving sufficient opportunity to the accused persons to defend. I find no illegality or impropriety in the order impugned. The trial court is directed to provide every opportunity to the accused persons as provided under Section 217 of the Code.

7. This revision application, being devoid of any merit is, hereby, dismissed. However, the court below is directed to conclude the trial within three months from the date of production of this order. (R.N. Verma, J.) Jharkhand High Court, Ranchi Dated, 10th September, 2015 Anit/N.A.F.R.