

indu Devi @ Manju Devi and ors Vs. the State of Bihar and anr

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Court : Patna

Decided On : May-13-2012

Appellant : indu Devi @ Manju Devi and ors

Respondent : The State of Bihar and anr

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Miscellaneous
No.19318 o

1. Indu Devi @ Manju Devi, wife of Daddan Singh.
2. Gyaneshwar Singh, son of Late Gupta Singh.
3. Rama Nand Singh.
4. Ram Pravesh Singh, son of Sri Devnandan Singh.
5. Ashok Kumar Singh, son of Dr. K.K. Singh.
6. Bunt Singh, son of Sri Vishnu Deo Singh.
7. Krishna Singh, son of Vishnu Deo Singh.
8. Arvind Singh @ Arvind Kumar Singh, son of Rameshwar Singh.
9. Ganesh Prasad, son of Janardan Prasad.

10. Janardan Prasad, son of Badri Lal. All resident of Muhalla-Satendra Nagar, Block Colony, P.S. Aurangabad (T), District-Aurangabad. ...Petitioners. Versus 1. The State Of Bihar.

2. Amit Kumar Singh, son of Ashok Singh, resident of Muhalla-Satendra Nagar, Block Colony, P.S. Aurangabad (T), District-Aurangabad. Opposite Parties.

----- For the Petitioners : Mr. Rana Pratap Singh, Senior Advocate and Rakesh Kumar, Advocate. For the State : Mr. Abhimanyu Shama, A.P.P. For O.P. No.2 : Mr. Bhanu Pratap Singh, Advocate.

----- O R D E R 8.13.1.2012 The petitioners have approached this Court under Section 482 of the Code of Criminal Procedure, to quash the order dated 30.1.2008 passed in Complaint Case No.326 2 of 2004 /Trial No.1078 of 2008 by the court of Sri P. Paswan, Judicial Magistrate, First Class, Aurangabad, adding Sections 364 and 395 of the Indian Penal Code in his earlier order dated 10.8.2005, summoning the accused- petitioners finding prima facie case under Sections 147, 148, 149 and 323 of the Indian Penal Code, in the light of the order dated 16.1.2008 passed by the Additional Sessions Judge, Fast Track Court not III, Aurangabad in Criminal Revision No.63 of 2005, as preferred by the opposite party no.2, Amit Kumar Singh, and also the order dated 16.1.2008 passed by the Additional Sessions Judge, Fast Track Court not III, Aurangabad in Criminal Revision No.63 of 2005, filed by the opposite party no.2 Amit Kumar Singh, allowing the aforesaid Criminal Revision, directing the Magistrate, in seisin of the case, to pass a fresh order in accordance with law in the light of the observations made in the order. A prayer has also been made to quash the entire criminal proceedings, arising out of the aforesaid complaint case, against the accused- petitioners.

2. In brief the case is that the opposite party no.2, Amit Kumar Singh, had lodged the F.I.R., registered as Aurangabad Nagar P.S. Case No.541 of 2002 o

15. 12.2002 under Sections 147, 148, 149, 379, 323 and 364 of the Indian Penal Code and Section 27 of the Arms Act against the accused-petitioners. The police on investigation of the case submitted the final form due to lack of evidence on 31.5.2003. Thereafter, the Chief Judicial Magistrate, Aurangabad, accepting the

final form proceeded on protest petition of opposite party no.2, numbed as Complaint Case No.326 of 2004. The court of Sri P. Paswan, Judicial Magistrate, First Class, Aurangabad, on inquiry under Section 202 of the Code of Criminal Procedure, summoned the accused-petitioners finding prima facie case under Sections 147, 148, 149 and 323 of the Indian Penal Code vide order dated 10.8.2005. Being aggrieved and dissatisfied with the aforesaid order dated 10.8.2005, the opposite party no.2 preferred the Criminal Revision, numbered as Criminal Revision No.63 of 2005, which was allowed by the Additional Sessions Judge, Fast Track Court not III, Aurangabad, vide order dated 16.1.2008, with observation that there is material on record to proceed against the accused for the offence under Sections 364 and 395 of the Indian Penal Code apart from Sections 147, 148, 149 and 323 of the Indian Penal Code, under which the 4 accused-petitioners have already been summoned vide order dated 10.8.2005, directing the Magistrate, in seisin of the case, to pass a fresh order in accordance with law in the light of the observations made in the order. On receiving the copy of the aforesaid order dated 16.1.2008 passed in Criminal Revision No.63 of 2005, the court of Sri P. Paswan, Judicial Magistrate, First Class, Aurangabad, passed the order on 30.1.2008 to add Sections 364 and 395 of the Indian Penal Code in the order dated 10.8.2005, summoning the accused-petitioners finding prima facie case under Sections 147, 148, 149 and 323 of the Indian Penal Code.

3. Learned counsel appearing on behalf of the petitioners made submission that once the Criminal Revision No.63 of 2005, as preferred by the opposite party no.2 against the order dated 10.8.2005, whereby the accused-petitioners were summoned under Sections 147, 148, 149 and 323 of the Indian Penal Code, was allowed with a direction to the Magistrate, in seisin of the case, to pass a fresh order in accordance with law in the light of the observations made in the order, the Magistrate has no option but to enquire the matter afresh and pass appropriate 5 orders, but the learned Magistrate has added only Sections 364 and 395 of the Indian Penal Code in the earlier summoning order dated 10.8.2005, which is illegal and amounts to abuse of the process of the court.

4. On the other hand, learned counsel appearing on behalf of the opposite party no.2 made submission that there is no illegality in the order dated 30.1.2008

passed by the court of Sri P. Paswan, Judicial Magistrate, First Class, Aurangabad, adding Sections 364 and 395 of the Indian Penal Code in the earlier order dated 10.8.2005, summoning the accused-petitioners finding prima facie case under Sections 147, 148, 149 and 323 of the Indian Penal Code in Complaint Case No.326 of 2004, in the light of the order dated 16.1.2008 passed by the Additional Sessions Judge, Fast Track Court not III, Aurangabad, in Criminal Revision No.63 of 2005.

5. It appears from the record that after accepting the final form submitted by the police on investigation in Aurangabad (T) P.S. Case No.541 of 2002 lodged by the opposite party no.2, his protest petition was treated as complaint case, numbered as Complaint Case No.326 of 2004. On inquiry under Section 202 of the Code of Criminal Procedure, the accused-petitioners were summoned finding prima facie case under Sections 147, 148, 149 and 323 of the Indian Penal Code by the court of Sri P. Paswan, Judicial Magistrate, First Class, Aurangabad vide order dated 10.8.2005. The said order was challenged by the opposite party no.2 through Criminal Revision No.63 of 2005 on the ground that accused ought to have been summoned for the offence under Sections 364 and 395 of the Indian Penal Code, which was allowed by the Additional Sessions Judge, Fast Track Court not III, Aurangabad, vide order dated 16.1.2008, with observation that there is material on record to proceed against the accused persons for the offence under Sections 364 and 395 of the Indian Penal Code apart from Sections 147, 148, 149 and 323 of the Indian Penal Code, with a direction to the Magistrate, the seisin of the case, to pass a fresh order in accordance with law in the light of observation.

6. In a case involving graver offences if the Magistrate summons finding prima facie case in respect of lesser offences in that event the accused are deemed to have been discharged for graver offences. In such a case, higher Court can entertain the criminal revision and there is no bar under Section 392(2) of the Code of Criminal Procedure. Apparently, there is no illegality in the order dated 16.1.2008 passed by the Additional Sessions Judge, Fast Track Court not III, Aurangabad, allowing the revision of opposite party no.2.

7. The order dated 30.1.2008 expressed that the learned Magistrate added the Sections 364 and 395 of the Indian Penal Code only on the basis of the order dated 16.1.2008 passed in Criminal Revision No.63 of 2005 preferred by the opposite party no.2 against the summoning order dated 10.8.2005. Once the Criminal Revision No.63 of 2005, preferred by the opposite party no.2 against the summoning order 10.8.2005, was allowed with a direction to the Magistrate, in seisin of the case, to pass a fresh order in accordance with law, the Magistrate had no option except to enquire the matter afresh at least reappraise the evidence on record and pass the order. As such, the order dated 30.1.2008 passed by the court of Sri P. Paswan, Judicial Magistrate, First Class, Aurangabad, adding Sections 364 and 395 of the Indian Penal Code in the earlier summoning order dated 10.8.2005 without further enquiry appears to be an abuse of the process of the court

8. Under the aforesaid facts and circumstances, the order dated 30.1.2008 passed by the court of Sri P. Paswan, Judicial Magistrate, First Class, Aurangabad, in Complaint Case No.326 of 2004 /Trial No.1078 of 2008, is hereby quashed and the application is allowed to that extent . The Magistrate, seisin in case, is directed to pass a fresh order on further enquiry in accordance with law. (Rajendra Kumar Mishra, J) P.S./A.F.R.

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