

(2011) 09 JH CK 0059

In the Jharkhand High Court

Case No : Criminal Revision No. 1055 of 2007

Angrej Das

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 203
Penal Code, 1860 (IPC) — Section 323, 342, 385, 504

Citation : (2011) 09 JH CK 0059

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prashant Kumar

1. This application has been filed for quashing the order dated 1.12.2007 passed by learned Additional Chief Judicial Magistrate, Dumka in PCR Case No. 44 of 2007 corresponding to Trial Case No. 27 of 2007, whereby complaint petition of petitioner has been dismissed u/s 203 of the Code of Criminal Procedure.

2. It is submitted by Sri Rajeeva Sharma, learned Senior Advocate appearing for the petitioner, that the learned court below dismissed complaint petition after appreciating the evidence as if it was holding regular trial. It is submitted that at the stage of enquiry a Magistrate is only required to see whether from the materials prima-facie offence made out against the accused or not. In support of aforesaid contention, Sri Sharma relied upon the judgment of Hon''ble the Supreme Court reported in Nirmaljit Singh Hoon Vs. The State of West Bengal and Another, .

3. On the other hand, Sri Mithilesh Kumar Singh, learned counsel appearing for opposite party nos. 4-5 submits that it is open for a Magistrate to look into the evidence adduced at the stage of enquiry and if he finds that the statements of witnesses are self contradictory, then he can dismiss complaint petition. It is

further submitted that in the instant case, statement of complainant is self contradictory, because in the complaint petition petitioner (complainant) stated that occurrence took place while he was going to his house at Barmasiya for collecting goods, whereas in Ms statement on oath, he stated that occurrence took place while he was going towards Nala on a truck. Accordingly, it is submitted that the learned court below rightly dismissed the complaint petition.

4. Having heard the submissions, I have gone through the record of the case. It has been held by Hon''ble the Supreme Court in Nirmaljit Singh Hoon Vs. The State of West Bengal and Another, that "the enquiry envisaged u/s 202 of the Cr. P.C. is only for ascertaining whether there is evidence in support of the complaint, so as to justify the issue of process. The Section does not say that a regular trial of adjudging the truth or otherwise of the person complained against should take place at that stage, for such a person can be called upon to answer the accusation made against him only when a process has been issued and he is on trial".

5. From perusal of impugned order, I find that learned court below dismissed complaint because no local person examined in support of alleged occurrence. Learned Court below further finds contradiction with respect to abuses hurled by accused person. I further find that the learned court below appreciated evidences for adjudging the guilt of accused as if he is holding the trial. Under the said circumstance, I find that the learned court below exceeded in his jurisdiction while dismissing the complaint. In my view, at the stage of enquiry u/s 202 of the Cr. P.C. a Magistrate is only required to see whether evidence available in support of allegation made in the complaint petition. In the instant case from perusal of complaint petition, statement of complainant on S.A. and also statement of witnesses (certified copy of which annexed with this application) I find sufficient materials in support of allegations made in complaint petition, from which prima-facie an inference can be drawn that accused persons committed offences under Sections 342,385,504,323 of the Indian Penal Code,

6. Accordingly I find that impugned order suffers from material illegalities and irregularities, therefore cannot be sustained. Thus, this Revision is allowed and impugned order is set aside. Learned court below is directed to make fresh enquiry and pass order in accordance with law.