
(2005) 03 JH CK 0061

In the Jharkhand High Court

Case No : Writ Petition (Cr) No. 280 of 2004

Ashok Mehta and Another

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 02-03-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202
Penal Code, 1860 (IPC) — Section 147, 148, 323, 325, 34

Citation : (2005) 3 JCR 459

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : R.S. Majumdar and Indrajeet Sinha, for the Appellant; G.P. II for the respondent No. 1 and A.K. Kashyap, for the respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Hari Shankar Prasad, J.—This writ petition has been filed for quashing the order dated 27.4.2004, passed in Criminal Revision No. 119 of 2003 whereby and where under learned Sessions Judge, East Singhbhum, Jamshedpur affirmed the order of the learned Judicial Magistrate passed in C/1 Case No. 317 of 1993 dated 17.4.2003.

2. The facts leading to the filing of the writ petition are that respondent No. 2 filed a complaint case before learned Chief Judicial Magistrate, Jamshedpur on 30.9.1993 relating to the occurrence alleged to have taken place on 29.9.1993. The petitioner, Ashok Mehta was at the relevant point of time posted as Executive Director (Administration) but he has now retired and petitioner No. 2, Arun Narayan Singh, was holding the post of General Manager, Town division, TISCO. Learned Magistrate examined the complainant on S.A. on 30.9.1993 and held enquiry u/s 202 of the Code of Criminal Procedure and recorded statement of witnesses on the basis of which he took cognizance against the petitioner and one Anil Kumar Shrivastava, Officer-in-Charge of Bistupur Police Station, Jamshedpur, vide order dated 6.9.1994 for offences under Sections 147, 148,

448, 342 and 323 of the Indian Penal Code.

3. Cafeteria in question was given to one S.A. Sanmugam Pillai by a licence dated 1.12.1972 by the TISCO Limited and later he entered into a partnership with Deo Sharan Singh and thereafter in this way licence was given to Deo Sharan Singh on 27.11.1985, but due to old age he entered into a partnership with one Shrimati Leela Devi, wife of complainant and her son-in-law Ram Pukar Singh with whom the complainant was associated. The above licence was granted on 27.11.1985 for a period of two years commencing from 1.1.1984 to 31.12.1985.

4. Learned counsel appearing for the petitioners submitted that the order is wholly illegal and without jurisdiction and is fit to be set aside. It was also pointed out that learned Courts below have committed manifest error of law by overlooking the directions given by this Court in Cr. Misc. Nos. 164 of 1995 (R), 4305 of 1994 (R) and 4958 of 1994 (R) which were disposed of by a common judgment dated 27.2.1996 and the learned Courts below should have followed the directions given by this High Court but surprisingly enough learned Courts below have riot followed the directions and thereby violated the directions of the High Court. It was further pointed out that both the Courts below have failed to look into this aspect of the matter and further that this complaint case has been filed as a counter blast to the First Information Report that was lodged against them by the TISCO officials. It was also pointed out that absence of allegation as against these petitioners in the writ petition filed by the complainant before the High Court make it clear that the instant complaint petition is nothing but after thought as it has been filed with a sole intention to harass the petitioners, who are senior officials of TISCO. It was further pointed out that there was sufficient material on record before both the Courts below to discharge the petitioners and even if the allegations as levelled against the petitioners by tile complainant are taken to be true in its entirety, there is no probability that the petitioners will be held guilty of committing offence as alleged. The First Information Report was lodged not against the complainant but with regard to the acts of Increasing unlawful activities carried out at Lake Cafeteria as also the acts amounting to hurt, theft, criminal intimidation etc. committed by the complainant and his accomplices and competent Court has held that there was no relationship of landlord and tenant between TISCO and the complainant. It was further pointed out that learned Magistrate has made out a third which is against the materials on record and this fact has also been overlooked by the leaned Sessions Judge. The allegations are carried out with malice and absurdity and the allegations levelled and the evidence produced do not disclose the commission of any offence and make out a case against the petitioners. It was also pointed out that the complaint petition has been filed belatedly for which no reasonable explanation has been furnished and continuance of such case will amount to abuse of the process of the Court.

5. On the point that this instant complaint case has been filed as counter-blast to

the case lodged by the police, cognizance taken in this instant complaint case should be quashed. In this connection, reliance was placed upon *Parwati Agarwal and Another Vs. State of Jharkhand and Another*, wherein it has been held that subsequent cases filed, it is actuated with malice and was liable to be quashed. Reliance was also placed upon *State of Orissa through Kumar Raghvendra Singh and Ors. v. Ganesh Chandra Jew* 2004 (3) ECC 82 (SC) : 2004 (2) SC 757 wherein it has been held that case was filed under Sections 341, 323, 325, 506 and 386/34, IPC and a petition to quash the proceeding was filed stating therein that this case is counter-blast to the earlier case filed in which O.P. No. 2 was arrested and in that case proceeding was quashed. Reliance was further placed upon *G.C. Bahuguna and others v. State of Bihar and others* 1999 (2) ECC 571 wherein it has been held that complaint being counter-blast to the police case and delay not properly explained and due to contradictory version of complainant, cognizance order was set aside and proceeding quashed. What happened in the instant case is that at the instance of TISCO officials, a police case was registered and some Articles were seized and inventory list of Articles was prepared and complainant of the case was arrested, he was produced before the Magistrate but he did not lodge any complaint against the misbehaviour of the police or any person and further that he even filed a writ application before the High Court but did not allege any allegation against the petitioners and further that in the bail application filed for release, no allegation whatsoever was alleged and seven days after release from the custody, complainant has lodged this case. Now, the plea of the learned counsel for the petitioners is that the complainant got so many opportunities to give his version of the occurrence as he has given in the complaint petition but all the opportunities which he got, such as production before the learned Magistrate, bail petition filed before the learned Court of Magistrate and also in a writ application before the High Court, no such allegation whatsoever was levelled against these petitioners and after some delay, complainant has come out with altogether different version and, therefore, there being contradiction in the version of the complainant and, therefore, it was submitted that on the basis of such case laws referred to above, cognizance as well as criminal proceeding should be quashed. Reliance was further placed upon *Sister Eulalia Furtado @ Eulalia v. State of Bihar and Ors.* 2000 (1) ECC 51 (Pat) wherein it has been held that when complaint case is a counter-blast to the police case, such complaint case should be quashed.

6. The learned counsel further pointed out that the petitioners had earlier preferred Cr. Misc. Nos. 164/95(R), 4305/94(R) and 4958/94(R) which were disposed of by common judgment on 27.2.1996 and some directions/observations were made for framing of charges and taking cognizance, but the learned Court below did not obey the direction/order passed in these Cr. Misc. petitions by the High Court and, therefore, the Court below committed contempt of Court and they are liable to be punished. In this connection, reliance was placed upon *Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit*, wherein it has been held that when judicial officers are not

following a binding precedent, then judicial officers commit contempt of Court of the Superior Court. Here in the instant case, in the aforesaid Cr. Misc. petition referred to above, some directions were given by the High Court but those directions were neither followed by the learned trial Court nor by the learned Sessions Judge by disposing of the Cr. Revision filed against the order refusing to discharge and, therefore, the learned Court below, it is stated, has committed contempt of Court of the Superior Court.

7. On the other hand, learned counsel appearing for the complainant submitted that the impugned order does not require interference inasmuch as the learned Magistrate after application of judicial mind, has passed order. Learned counsel further pointed out that it is now well settled that charge can be framed even there is strong suspicion, but in the instant case there is not only strong suspicion but sufficient material in the case to frame charge and the learned Court below has accordingly ordered for framing charges. It was also pointed out that the trial Court is the best Court where material on record for framing of charges is assessed and the trial Court can very well find sufficiency or otherwise of the materials to frame charges. In this case the learned Court below has assessed the material and found it sufficient for framing of charges and, therefore, High Court has got no jurisdiction to interfere with the order of framing of charges. In this connection, reliance has been placed upon State of Maharashtra Vs. Salman Salim Khan and Another, wherein it has been held that arguments regarding framing of proper charge can only be decided by the trial Court at any appropriate stage of the trial.

8. It was also pointed out that charge can be framed even on materials indicating strong suspicion about commission of alleged offence and when there is strong suspicion, charges can be framed. In this connection, reliance was placed upon Chatur Saw and others v. State and another 2001 (1) ECC 129 (Jhr) any my attention was drawn to Para-6 of the judgment, which is quoted here in-below :-

"6. It is well settled that the charge can even be framed on the material on record capable of inferring strong suspicion about commission of offence."

9. It was further pointed out that whether charges should be framed or not, test of existence of prima facie case is the rule and whether there is ground for framing charges that the accused has committed offence, then in such situation it can be said that prima facie case is made out against the accused persons. But when the Court is of the view that the accused might have committed offence, it can frame charge and at the stage of framing of charges, probative value of the material on record cannot be gone into. In this connection, reliance was placed upon 1996 SCC 820 and in this connection, it was submitted that the learned Court has found material sufficient for framing of charges.

10. Admittedly, on 20.9.1993 one B.C. Kumar lodged a First Information Report with Bistupur Police Station which was registered as Bistupur Police Station Case No.306 of 1993 and in pursuance of registration of the case, police went to the

place of occurrence and finding the situation otherwise, arrested the complainant and he was produced before a local Magistrate and at that time, as per material on record, complainant-respondent No. 2 did not lodge any complaint against any one either against petitioners or against other persons. Thereafter a writ application was also filed by this complainant-respondent No. 2 and in that writ application also, as per material on record, he did not speak anything against the petitioners and, in the writ application and even in bail application, which he has filed for his release, he did not allege any allegation against the petitioners. But on 30.9.1993 he filed a complaint case levelling some allegation against the petitioners. Further, some Cr. Misc. petitions were also filed before the High Court being Cr. Misc. Nos. 164 of 1995(R), 4305 of 1994(R) and 4958 of 1994(R), which were disposed of on 27.2.1996 by common judgment, in which some directions/observations were made which are quoted herein-below :-

"7. Considering the submission of both the parties it appears that the plea raised by the petitioners are to be enquired in detail at the time of framing of the charges and that in the appropriate stage where the Court below will consider the case, if at all this complaint was filed subsequently as counter blast of the criminal case and further the complainant actually was running cafeteria under a licence or not, all these matters are to be enquired at the time of framing of the charges and the Court below will examine all these facts and will give a detail reasoned order at that time.

8. It is also contended on behalf of the petitioners that there is no allegation in the complaint petition as against the petitioner, namely, Arun Narayan Singh and Ashok Mehta. This fact also to be enquired by the trial Court at the stage of framing of the charges."

11. But from the impugned order dated 17.4.2003 passed by the learned Magistrate in C/1 Case No.317 of 1993 as well as of the order dated 27.4.2004 passed by the learned Sessions Judge in Cr. Revision No. 119 of 2003, it appears that observations/directions were not carried out and orders were passed without following directions given in the aforesaid Cr. Misc. Petitions which were disposed of on 27.2.1996 by the High Court.

12. Admittedly, complainant had filed a complaint case against the petitioners and others alleging commission of offence by these petitioners and the learned Court of Magistrate had taken cognizance after holding enquiry u/s 202, Cr PC and at the time of framing of charges, the learned Court below did not consider the facts or matters in consideration of which directions were issued and in the Cr. Revision also, the learned Sessions Judge surprisingly enough, has taken a quite contrary view to the directions/observations made by the High Court in the aforesaid Cr. Misc. Petitions and thereby he has definitely committed a contempt of Court and for the present it is true that those directions were not carried.

13. It is also a fact which has come on record that this instant case being C/1 Case No.317 of 1993 was filed after registration of Bistupur P.S. Case No. 306 of

1993 in which this complainant-respondent No. 2 was arrested and in all other acts this complainant-respondent No.2 took, such as filing of writ application before the High Court, his production before the Magistrate and filing of bail application for his release, he did not allege any allegation against the petitioners and after some days of the occurrence he filed this complaint case against the petitioners levelling certain allegation against the petitioners and, therefore, it can very well be said that the complaint case is a counter blast to the police case registered against him and also that he did not explain the delay in filing of complaint case and further, in writ application, his production before the Magistrate and in bail application for his release, he did not allege or make any allegation against the petitioners and from the case laws discussed in Para-5, it is clear that if the case is allowed to continue, then it will be abuse of the process of the Court.

14. Considering all aspect of the matter, this writ application is allowed and the order dated 17.4.2003 passed in C/1 Case No. 317 of 1993 and subsequent prder date 27.4.2004 passed in Cr. Revision No. 119 of 2003, are hereby quashed.