
(2016) 04 JH CK 0062

In the Jharkhand High Court

Case No : Cr. Revision No. 223 of 2011.

Ashutosh Jha @ Bodhan Jha and Others

APPELLANT

Vs

State of Jharkhand and another

RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 228

Citation : (2016) 2 AIRJharR 555 : (2016) 2 ECrC 722

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : Shree Jya Prakash Jha, A.Jha, S.P. Jha, Advocates, for the Appellant;
Sadhna Kumar, APP and Ranjan Kumar Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J. - This revision is directed against the order dated 19.02.2011 passed by the District and Sessions Judge-cum-Special Judge, Godda in Special Case No. 09 of 2009, whereby he rejected the application of the petitioners filed under section 228 of the Cr.P.C. and hold that prima facie offence against the petitioners made out under sections 307/34 of the Indian Penal Code and section 3(1)(V) of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989. Accordingly, the learned court below framed charges against the petitioners under the aforesaid sections.

2. It is submitted by Sri Jai Prakash Jha, learned senior counsel appearing on behalf of the petitioner that the learned court below has committed serious illegality, as it had not considered the documents filed by the petitioners along with the petition under section 228 of the Cr.P.C. It is further submitted that the aforesaid documents show that the informant is not in possession of the land in question. Under the said circumstance, petitioners had committed no offence, thus, are entitled to be discharged.

3. Mrs. Sadhna Kumar, learned Addl. P.P. and Sri Ranjan Kumar Singh, learned

counsel appearing for the opposite party no. 2 had opposed the above submissions and submitted that in view of the three Judges Bench of Hon''ble Supreme Court in State of Orissa v. Debendra Nath Padhi reported in AIR 2005(SC)-359, there is no illegality in the impugned order. Learned counsel further submitted that the injuries of the injured, referred in the impugned order, shows that the informant had received injuries on his head, which is a vital part of the body. It is further submitted that there is direct allegation against petitioner no. 1 that he assaulted the informant with Farsa on his head. Thus, the injury report corroborates the allegation made in the FIR. Since, petitioner no. 1 had used Farsa (a lethal weapon) for assaulting the informant on the head (vital part of the body), therefore, offence under section 307 of the I.P.C. made out. It is submitted that since petitioner has interfered with the right of enjoyment of the informant over the land in question, thus, offence punishable under section 3(1)(V) of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, made out.

4. Having heard the submissions, I have gone through the records of the case.

5. It is alleged in the FIR that while the informant and their family members were harvesting paddy crops, grown on their land, petitioners arrived at the place of occurrence armed with Farsa and Lathi etc. and altercated with the petitioners. It is further alleged that petitioner No. 1 inflicted injury on the head of the informant with Farsa, whereas other accused persons assaulted the informant with Lathi. The injury report of the injured, referred in the impugned order, shows that the informant had received three injuries. Injury No. 1 is on the parietal area of scalp, whereas other two injuries are defused swelling. Thus, I find that the injury report supports the allegations made against the petitioners. Since, in course of occurrence, petitioner no. 1 had given Farsa blow on the head of the injured, therefore, prima facie offence under section 307 read with Section 34 of the Indian Penal Code made out against the petitioners. It is alleged that the occurrence took place while the informant and his family members were harvesting paddy crops from their land. It is also stated that the informant is the member of schedule caste. Under the said circumstance, prima facie offence under section 3(1)(V) of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act made out. Thus, I find no illegality in the order of the learned court below.

6. Now coming to the contention of Sri Jai Prakash Jha that the learned court below had not considered the documents filed by the petitioners along with the application under section 228 of the Cr.P.C., I find that the aforesaid submission of Sri Jha is liable to be rejected in view of the judgment of Hon''ble Supreme Court in State of Orissa v. Debendra Nath Padhi (Supra). In that judgment their Lordships had specifically held at paragraph No. 23 that :

"As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the trial court has powers to

consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided."

7. It appears that learned court below had also noticed the aforesaid judgment and rejected the plea of the petitioner. Thus, I find no illegality in the aforesaid finding of the learned court below.

8. In the result, this revision fails. Accordingly, the same is dismissed.