
(2009) 11 JH CK 0099
In the Jharkhand High Court

Bhatu Sao and Others

APPELLANT

Vs

State of Jharkhand and Dayamanti Devi

RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 113, 144, 397

Citation : (2009) 11 JH CK 0099

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—This Criminal Revision has been preferred for setting aside the order impugned dated 27.3.2009 passed by the Sessions Judge, Hazaribagh in Cr. Appeal No. 178 of 2008 by which order passed in a proceeding u/s 107 Cr.P.C. by the Executive Magistrate, Ramgarh in Misc. Case No. 44 of 2008. on 14.10.2008 was affirmed whereby the petitioners herein were directed to execute bonds for a period of one year to maintain peace and be of good behaviour.

2. The prosecution story in short was that while one Dayamanti Devi, i.e. the. O.P. No. 2 had started construction boundary wall over the land pertaining to Khata No. 62 plot No. 1145, measuring an area of 0.03 acre on 21.1.2008 she was obstructed by the petitioners second party to the proceeding who abused and threatened her of dire consequences. The opposite party No. 2 Dayamanati Devi complained to the local police and by its report dated 31.8.2008 recommended for initiation of a proceeding u/s 107 of Cr.P.C. against both the parties. The learned SDM Ramgarh having been satisfied with the complaint and the report of the police thereof initiated a proceeding u/s 107 of Cr.P.C. and issued show cause against both the parties as to why they should not be bounded to execute bond for a period of one year to maintain peace and to be of good behaviour. On receipt of the notices the parties entered appearance before the Sub Divisional Magistrate Ramarh and filed there respective "show causes".

Having received the same the learned S.D.M. transferred the proceeding to the file of the Executive Magistrate who having gone through, the contents of their causes shown and having been satisfied that it were the petitioners who were aggressive, called upon them to execute bonds for a period of one year each. Against that order, the petitioners preferred Cr.appeal No. 178 of 2008 and the Sessions Judge Hazaribagh by order dated 27.3.2009 dismissed the appeal.

3. The petitioners have assailed the impugned order recorded by the Sessions Judge on the limited grounds that the dispute in question between the parties was of civil nature to which the learned Sessions Judge failed to appreciate that If at all any proceeding under the facts and circumstances was required between the parties, it were u/s 144 of Code of Criminal Procedure. The learned Counsel pointed out that the notices Issued to the petitioners u/s 113 of Cr.P.C. were vague and for such reason the order passed by the Executive Magistrate calling upon to execute bonds should have been dismissed in Appeal. The statement of the first party's witness No. 2 Rohan Sao was ignored by the learned Executive Magistrate as also by the learned Sessions Judge in appeal who clearly deposed that the tension was no longer prevailing between the parties and they were living in peace and harmony and therefore, the proceeding ought to have been dropped.

4. The opposite party No. 2 entered appearance by executing vakalatnama and filed counter affidavit stating inter alia that both the courts below were consistent in findings of fact and on such ground alone this Revision is fit to be dismissed. The learned Counsel attracted the attention by submitting that the courts below have given concurrent findings on appreciation of materials on the record and the same may not be reappreciated as no glaring illegality or irregularity in the impugned order could be pointed out by the learned Counsel for the petitioners therefore, in the interest of distributive justice no interference was warranted u/s 397 of Cr. P.C.

5. Having regard to the facts and circumstances of the case, arguments advanced on behalf of, the parties and on perusal on records I find that the learned Sessions Judge, Hazaribagh on scrutiny of the evidence and police report has affirmed the order passed by the Executive Magistrate Ramgarh recorded in a proceeding u/s 107 of Cr.P.C. It is not the case of the petitioners that the appellate court failed to consider the facts and circumstances of the case in proper perspective. The first party to the proceeding i.e. the O.P. No. 2 herein is said to be an old lady aged about 70 years who was obstructed by the petitioners while she was raising boundary wall. On the recommendation of the police the learned S.D.M. Ramgarh took preventive action to avoid imminent breach of peace between the parties. I observe that under the facts and circumstances the consistent finding of the courts were sufficient to call for the petitioners to execute bonds in the manner indicated in the impugned order of the Executive Magistrate. I appreciate the reply advanced on behalf of the O.P. No. 2 that the proceeding u/s 107 of Cr.P.C. cannot be equated with a regular trial where

evidence is weighed strictly in accordance with Evidence Act. The report of the police was nothing but a source of information that was called for by the SDM Ramgarh and having been satisfied with such report the learned Executive Magistrate took initiative by initiating a proceeding u/s 107 of Cr.P.C. The police report was not required to be proved strictly and exhibited as proceeding u/s 107 of Cr.P.C. is quashi criminal proceeding in nature.

6. For the reasons stated above I do not find any merit in this Criminal Revision application, accordingly, it is dismissed and the orders impugned passed by the courts below are affirmed.