
(2011) 06 JH CK 0009
In the Jharkhand High Court
Case No : Criminal M.P. No. 78 of 2011

Bijay Kumar Verma @ Dr. B.K. Verma	APPELLANT
Vs	
The State of Jharkhand and Premvada Devi	RESPONDENT

Date of Decision : 27-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 34, 354, 387

Citation : (2011) CriLJ 4752 : (2011) 7 RCR(Criminal) 2510

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Advocate : Nityanand Pd. Sinha, Rajesh Kumar Mahtha and Kislaya Prasad, for the Appellant; D.K. Prasad, APP for the State, for the Respondent

Final Decision : Allowed

Judgement

D.K. Sinha, J.—Petitioner has invoked the inherent jurisdiction of this Court u/s 482, Code of Criminal Procedure for quashment of the

order impugned dated 3.12.2009, passed by the CJM, Ranchi in Complaint Case No. 2042 of 2009, by which cognizance of the offence was

taken u/s 354, Indian Penal Code and directed summons" to be issued to the Petitioner to answer the charges, which is presently pending in the

Court of Shri Taufique Hussain, Judicial Magistrate, 1st Class, Ranchi.

2. Prosecution story in short was that a complaint was filed by the complainant-opposite party No. 2 herein before the CJM, Ranchi against the

Petitioner on 17.8.2009 stating inter alia, that she was a widow and was living at Chutia Mohalla, Ranchi with her mother and sister. The accused-

Petitioner was an eminent Doctor having his Eye Clinic-cum-Nursing Home. Previously the complainant-opposite party No. 2 was working in the

clinic of Dr. (Mrs.) Rita Verma, but later on she joined the nursing home of the accused-Petitioner as a Nurse and began to work there. She was treated well there for quite some time, but thereafter the accused Petitioner began to tease her intentionally and put her in the night shift so that finding her alone, he would gawk and smirk at her. Lastly, she narrated that the accused-Petitioner had been threatening that in case she protested against his advances, she would be removed. However, she continued to tolerate the advances of the Petitioner and ultimately, she decided to give up the job and for that she demanded Experience Certificate, which was given to her on 2.7.2008, but, on the same night, the Petitioner along with many anti-social elements came to her house, persuaded her not to give up the job and to join back his nursing home. She did join the nursing home of the Petitioner. In the meantime, her husband died on 8th February, 2009. The accused-Petitioner tried to continue his misbehaviour by alluring her to give money and to keep her as concubine, to which she conveyed this fact to her mother and sister. The complainant alleged that the Petitioner applied his force in his chamber on 6.5.2009 and when she refused and opposed his advances, she was removed from the job. She then approached ""Ujjwal Nari Utthan"", a social organization and also approached the Police authorities but no action could be taken and hence, she filed the complaint before the CJM.

3. Statement of the complainant-opposite party No. 2 was recorded by the CJM, Ranchi on 7.10.2009 on her solemn affirmation i.e. after a period of more than two months from the date of filing of the complaint in the Court wherein she did not refer any date/day, month of the alleged occurrence nor she made any explanation as to why she had not reported the matter to the Police. She nowhere stated in her complaint petition or in her statement recorded on solemn affirmation that she had raised alarm, in the nursing home on such occasions when the Petitioner had made his advances, where, even according to her, a large: number of Nurses and Staff remained on duty round-the-clock. She admitted that about 60 patients were being treated everyday. As a matter of fact, the complainant-opposite party was removed by the Petitioner due to her ill temper, bad behaviour with patients and negligence of duty about a month prior, to which she had acquiesced by writing regret letter about her negligence of

duty and rude behaviour with the Petitioner and had requested the Petitioner for her reinstatement in the job, to which she had undertaken not to be cocky and defiant in future and also that she would attend the patients with sincerity and care. On the above undertaking (Annexure-2), she was taken back into service of nursing home. As a matter of fact, on 18.9.2009 Petitioner had lodged an FIR with the Lalpur Police against the complainant-opposite party No. 2 herein as and one unknown phone-caller, wherein Petitioner had alleged that she with other women had forcibly entered into his chamber on 17.5.2009. at about 12:00 noon and had threatened to get him involved in false case involving women and that she had demanded extortion money from him in presence of other women, lest serious consequences would ensue. They had also asked the Petitioner to settle the matter with the complainant-opposite party, failing to which they would get him humiliated in the society. On the same night, unknown caller demanded extortion money on phone at about 8:00 p.m., to which the Petitioner immediately passed information to the Police, on the basis of which Lalpur P.S. Case No. 97 of 2009 against the complainant-opposite party No. 2 and her gang women for the alleged offence under Sections 387/34, Indian Penal Code (Annexure-3).

4. Mr. Sinha, the Learned Counsel, appearing on behalf of the Petitioner, submitted that in the facts and circumstances, it would be crystal clear that the complainant-opposite party No. 2 did not come before the Court with clean hands as she had suppressed the truth, the reasons for her removal from service by the Petitioner and her written apology and undertaking given by her for her reinstatement in service, motive of the complainant-opposite party No. 2 behind filing of this case against the Petitioner was to blackmail him and also to extort money on the threat to defame and sully his image, name and reputation in the society.

5. Concluding his argument, the Learned Counsel, Mr. Sinha further submitted that the learned CJM, Ranchi while taking cognizance failed to appreciate the startling fact that it could not have happened in a crowded nursing home, full of workers on duty and overflowing outdoor and indoor patients and that the complainant did not break or convey the alleged incident to any one present there which rendered the complaint case not only murky and doubtful but false as well and the cognizance of the offence

based on such complaint was having no leg to stand, which resulted in great miscarriage of justice. In the: statement recorded on solemn affirmation, the complainant-opposite party No. 2 had stated that the Petitioner used to tease her which was misconstrued by taking the legal import of modesty. Teasing woman could not come within the definition of outraging modesty so as to attract an offence u/s 354. Indian Penal Code. In her statement on solemn affirmation, she has used the word ""teasing""; that the Petitioner-accused has been teasing her, which cannot be held to be outraging modesty of the complainant-opposite party No. 2.

6. Apex Court in Ramkripal v. State of Madhya Pradesh reported in AIR 2007 SCW 2198, enumerated essential ingredients for constituting an offence u/s 354, Indian Penal Code as hereunder:

8. Coming to the question as to whether Section 354 of the Act has any application, it is to be noted that the provision makes penal the assault or use of criminal force to a woman to outrage her modesty, the essential ingredients of offence u/s 354, IPC are:

- (a) That the assault must be on a woman.
- (b) that the accused must have used criminal force on her.
- (c) That the criminal force must have been used on the woman intending thereby to outrage her modesty.

9. What constitutes an outrage to female modesty is nowhere defined in Indian Penal Code The essence of a woman's modesty is her sex. The culpable intention of the accused is crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive Modesty in this. Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty: of a woman and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention haying such outrage along for its object. As indicated above the word "modesty" is not defined, in Indian Penal Code. The Shorter Oxford Dictionary (Third Edn.)

defines the word modesty in relation to woman as follows:

Decorous in manner and conduct; not forward or lower Shame-fast, Scrupulously chaste

7. But in the instant case it is nowhere alleged that the Petitioner-accused had ever tried to undress her coupled with request for sexual intercourse

as this could not be substantiated in her statement on solemn affirmation, which gives rise to presumption that the facts as mentioned in the

complaint petition were not the true facts and some imaginary facts were introduced to make the case more colourful by magnifying the gravity of

the offence, which did never take place.

8. It would be relevant to mention, the Learned Counsel added, that the cognizance of the offence was taken only on the statement of the

complainant in spite of vast contradiction between the complaint filed and the statement recorded on solemn affirmation without calling for the

witnesses during course of inquiry u/s 202, Code of Criminal Procedure. While taking cognizance, the learned CJM observed in the impugned

order dated 3.12.2009

After receipt of complaint, an enquiry report- was culled for from the S.S.P. Ranchi, but the same was not received. Accordingly, the complainant

was examined on S.A., where she has disclosed that the accused had outraged her modesty against her will. Although there is delay in filing the

complaint and the corroborative material in support of complainant evidence has not been given, but it is offence against a woman. Hence, I feel

from material available on record that there are sufficient ground for proceeding against the accused, in the present matter. A prima facie case for

the offence u/s 354 I.P.C. is made out against the aforesaid accused.

Accordingly,- the cognizance against the accused Bijay Kumar Verma is hereby taken u/s 354 I.P.C.

9. Grounds taken by the CJM for taking cognizance, as referred to hereinbefore, cannot be considered as sufficient ground as no reminder was

given to the SSP for submission of the report and similarly, the complainant-opposite party No. 2 was not asked to produce other witnesses only

because she was a fair sex and her statement was found to be a gospel truth without scrutiny. Even no explanation was made as to the cause of

inordinate delay of two months in filing the complaint from the alleged date of occurrence. Complainant-opposite party No. 2 admitted in the

complaint that she had approached ""Ujjwal Nari. Utthan"", a social organization, but she was silent in the complaint as to what notice was taken by

them.

10. I find that the Petitioner-accused had earlier given information to the officer-in-charge of Lalpur police station about the misconduct of the

complainant-opposite party No. 2 herein as discussed hereinbefore in the argument of Mr. Sinha and on the basis of which, Lalpur P.S. Case No.

97 of 2009 was registered on 18.5.2009 under Sections 387/34, Indian Penal Code against the complainant and Ors. including the person, who

had made threatening call on his telephone number. I further find that the complainant Premvada Devi had admitted her guilt in her undertaking in

presence of the witnesses Keena Biswas and Raju, by which she undertook not to repeat her mistakes committed in the past and requested to

reinstate her on the job. It was nowhere stated in her undertaking that any kind of misbehaviour was done with her. Similarly, no information was

given to the police in this regard either by way of informatory or by filing written report of cognizable offence for institution of the FIR or to any of

her colleagues on duty at the relevant time.

11. From perusal of the materials on the record, I find that the complainant had not come with clean hands in this case and there appears prima

facie substance in the argument that her only intention was otherwise to extort money from the Petitioner. Admittedly, she was an employee in the

Eye Clinic of the Petitioner and was removed from the job on account of her misconduct. Although she was reinstated on her undertaking, but she

did not mend herself and sensing rough and adverse weather, she filed complaint against the Petitioner whereon cognizance of the offence was

taken without conscious consideration on the contradictions/omissions between the facts in the complaint and statement of complainant on her

solemn affirmation and without application of judicial mind only because the complainant was a fair sex, forgetting the principles of equality before

law and equal protection of law. I find, in the facts and circumstances no offence under. Section 354, Indian Penal Code is made out against the

Petitioner. It is relevant to mention that in spite of the notice sent on her address mentioned in the complaint she did not choose to appear and

according to the Learned Counsel, she was conscious about pendency of this petition wherein interim stay was granted and it was communicated

to the lower court where she was in attendance.

12. For the reasons stated above, I find that the criminal proceedings of the Petitioner Bijay Kumar Verma@ Dr. B.K. Verma would tantamount to miscarriage of justice. Accordingly, this petition is allowed and criminal proceedings of the Petitioner Bijay Kumar Verma @ Dr. B.K. Verma in Complaint Case No. 2042 of 2009 including the order impugned dated 3.12.2009 by which cognizance of the offence has been taken against him u/s 354, Indian Penal Code, both are quashed.