
(2012) 04 JH CK 0161

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 6096 of 2000 (R)

Chamu Sahu

APPELLANT

Vs

The State of Bihar (Now Jharkhand) and Bandini Orain

RESPONDENT

Date of Decision : 05-04-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 447, 447
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 10, 3, 5
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 —
Rule 7

Citation : (2012) 2 JCR 642 : (2012) 3 JLJR 503

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Sunil Kumar, for the Appellant; Amresh Kumar, Assistant Public Prosecutor for the State, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Mr.Justice H.C Mishra

1. Heard learned counsel for the petitioner and learned counsel for the respondent State. No one appears for O.P. No. 2 in spite of repeated calls, though the O.P. No. 2 has appeared through Vakalatnama. On the earlier occasion also, no one had appeared for O.P. No 2 in spite of repeated calls. In the present application, the petitioner has prayed for quashing the entire criminal proceeding against him in Basia P.S. Case No. 11 of 1999, corresponding to G.R. No 135 of 1999 including the order dated 17.1.2000 whereby the cognizance was taken against the petitioner by the learned Chief Judicial Magistrate, Gumla for the offences u/s 447 and 420 of the IPC and Section 3, 5 and 10 of the S.C. and S.T. (Prevention of Atrocities) Act.

2. It appears that the complaint petition was filed by the O.P. No. 2 in the Court of Chief Judicial Magistrate, Gumla which was registered as Complaint Case No.

230 of 1998 and the said complaint was sent for institution of police case u/s 156(3) of the Cr.P.C., on the basis of which Basia P.S. Case No. 11 of 1999 was instituted against the petitioner and the other co-accused persons. From perusal of the said complaint case, it is apparent that the complainant, who claimed to be a widow belonging to Schedule Tribe, had stated that the accused persons, including the petitioner, had constructed a house over the land of the complainant and they had also fraudulently obtained the documents relating to the land from the complainant and they demanded Rs.20,000/-, whenever the complainant wanted the said documents back. It is alleged that on 3.11.1998, the accused persons were putting boundary on the land, which was objected by the complainant, and again Rs. 20,000/- was demanded by the accused persons and they also threatened the complainant. It also appears that the said case was investigated by the Sub Inspector of police, who submitted charge-sheet against the accused persons for the offence u/s 447 and 420 of the IPC and Section 3, 5 and 10 of the S.C. and S.T. (Prevention of Atrocities) Act, on the basis of which by order dated 17.1.2000, passed by the Chief Judicial Magistrate, Gumla, the cognizance of the offences was taken and the case was transferred to the Special Court for trial.

3. Learned counsel for the petitioner has submitted that the impugned order passed by the Court below is absolutely illegal, in as much as, it is apparent from Annexure - 2, which is the charge-sheet filed in the case, that the case has been investigated by an Officer of the rank of Sub Inspector of police, whereas Rule 7 of the SC and ST (Prevention of Atrocities) Rules, clearly prescribes that the offence committed under the said Act, shall be investigated by a police officer, not below the rank of Deputy Superintendent of Police. Learned counsel accordingly, submitted that the entire investigation done by the Officer of the rank of Sub Inspector is absolutely vitiated and no cognizance could have been taken on the basis of the charge-sheet submitted by him. It is further pointed out that no offence can be said to be committed by the petitioner u/s 447 and 420 of the IPC on 3.11.1998 in as much as, admittedly the petitioner is in possession of the land in dispute from much before and has also constructed his house therein, as such, no offence is made out against the petitioner on the date of occurrence i.e. 3.11.1998, even if it is accepted that the petitioner was putting boundary on the land and admittedly there is no allegation that the complainant actually gave any money to the accused. Learned counsel accordingly, submitted that the Criminal proceeding against the petitioner is fit to be quashed.

4. Learned counsel for the respondent State on the other hand opposed the prayers submitting that there is no illegality in the impugned order whereby cognizance, was taken also under Sections 447 and 420 of the IPC.

5. After hearing learned counsels for both the sides and upon going through the record, I find from the complaint petition itself that the accused were in possession of the land in dispute from much before and had also constructed their house thereon. The complaint has been filed for the offence on a particular

date, i.e., 3.11.1998, when the accused were allegedly putting boundary on the land. In that view of the matter, I am of the considered view that offence cannot be said to be committed by the petitioner on the said date when the complainant objected putting of the boundary and the accused persons demanded Rs. 20,000/ from her. It is not the case of the complainant that the said money was ever given to the accused persons. Thus, in my considered view, as admittedly the possession of land in dispute was already with the petitioner, no offence can be said to be made out against the petitioner either for the offence u/s 447 of the IPC or 420 of the IPC on 3.11.1998. I also find force in the submission of the learned counsel for the petitioner that the investigation of the case which was admittedly made by the police officer of the rank of Sub Inspector, is absolutely vitiated and cannot be sustained in the eyes of law as Rule 7 of SC & ST (Prevention of Atrocities) Rules clearly provides that for the offences committed under the said Act, investigation cannot be made by the police officer below the rank of Deputy Superintendent of police. In the facts and circumstances of the case, I am of the considered view that the continuance of the criminal proceeding against the petitioner is absolutely illegal and the same cannot be sustained in the eyes of law. Accordingly, the entire proceeding pending against the petitioner in Basia P.S. Case No. 11 of 1999, corresponding to G.R. No. 135 of 1999 as well as the order taking cognizance dated 17.1.2000 passed therein, by the Chief Judicial Magistrate, Gumla, presently pending before the learned 1st Additional Sessions Judge, Gumla, are hereby, quashed. Let the L.C.R. be sent back forthwith. This application is, accordingly, allowed.