
(2008) 06 JH CK 0060
In the Jharkhand High Court

Fekan Singh and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 25-06-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227
Penal Code, 1860 (IPC) — Section 120B, 302, 307, 324

Citation : (2008) 06 JH CK 0060

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—The petitioners have filed the instant application against the order dated 24.01.2006 passed by the learned A.D.J. 1st, Bermo at Tenughat in connection with Sessions Trial No. 86 of 2004 whereby the learned Court below has framed charge against the petitioners for the offences under Sections 302, 307 and 324 read with Section 120B of the Indian Penal Code and also under Sections 3, 4, 5 and 6 of the Witch Practices Act.

2. The facts of the case in brief is that on the alleged date of occurrence, the informant along with her husband (deceased) and son were on the way to Gumla for the medical treatment of their sick boy. The time was around 6 am and it was a Tuesday. It is alleged that on half a kilometer from the residence of the accused Gopal Singh, who happens to be the cousin brother-in-law of the informant, concealed himself with a Tangi in his hand and as soon as the informant, her husband and his son came there, Gopal Singh assaulted the informant's husband with the Tangi on his neck several times and felled the victim on the ground. When his son tried to save him, he too was assaulted and injured by the assailant. The informant rushed for help to the village and by the time she brought the villagers to the place of occurrence, her husband was already dead.

3. The case was initially registered for the offences under Sections 302, 307 and

324 read with Section 120B of the Indian Penal Code and also under Sections 5 and 6 of the Witch Practices Act. After investigation, the first charge sheet was submitted against the accused Gopal Singh for the offences under Sections 302, 307 and 324 of the Indian Penal Code besides the offences under the Prevention of (Witch) Practices Act. The second charge sheet was submitted against some other accused persons only for the offences under the Prevention of (Witch) Practices Act. The final third charge sheet was submitted in respect of those accused persons against whom the investigation had continued for the offences under Sections 302, 324 and 307 read with Section 120B of the Indian Penal Code and also for the offences under the Prevention of (Witch) Practices Act. On receipt of the charge sheet, the learned Court of the Chief Judicial Magistrate took cognizance of the offences under Sections 302, 307 and 324 read with Section 120B of the Indian Penal Code and also under Sections 3, 4, 5 and 6 of the Prevention of (Witch) Practices Act against all the accused persons and thereafter case, of the petitioners were committed to the Court of sessions and the trial of the case was initiated. The present petitioners, against whom the charge sheet was filed recommending their trial for the offences under Sections 302, 324 and 307 read with Section 120B of the Indian Penal Code and Sections 3, 4, 5 and 6 of the Prevention of (Witch) Practices Act, had filed application u/s 227 Cr.P.C. praying for their discharge on the ground that the allegations made in the FIR are vague and the petitioners have committed no offence whatsoever as alleged against them. The learned sessions Court, however, did not agree with the grounds advanced by the petitioners and on the other hand by observing that there is sufficient material indicating a prima facie case made out against the petitioners for the aforesaid offences proceeded to frame charge accordingly.

4. Assailing the impugned order of the learned Court below, Mr. Vikram Singh, a learned Counsel for the petitioners submits that the impugned order and the charge is totally misconceived and without any basis. Learned Counsel argues that the learned Court below has failed to appreciate that the allegations in the FIR are directed against a single accused person namely Gopal Singh and there is no reference in any manner or even by way of any suggestion regarding the involvement of any person, much, less the present petitioners, in the alleged offence: It is further argued that the learned Court below has also failed to appreciate that the witnesses, whose statements were recorded in course of investigation, have tried to improve upon their earlier version and a deliberate attempt has been made to implicate the present petitioners also for the offences which they have not committed at all and this is on account of the previous enmity between the family of the deceased and the present petitioners, who happen to be closely related to each other.

5. Learned Counsel for the state, on the other hand, while controverting the grounds advanced by the petitioners, submits that there is no impropriety or infirmity in the impugned order of the learned Court below. Learned Counsel explains that the learned Court below has formed its opinion that a prima facie case is made out against the present petitioners for the aforesaid offences, not

only on the basis of the FIR but also on the basis of the materials available in the case diary. Learned Counsel submits further that even in the FIR, it has been categorically stated that prior to the murder of the deceased, all the accused persons had convened a meeting in the village wherein a decision was taken by them to eliminate the deceased since it was believed by them that the deceased was practicing witch craft. The statements of the informant and the other witnesses recorded in course of investigation also confirm this fact and do suggest categorically that the murder of the deceased was committed in furtherance of a conspiracy which was hatched out between the principal assailant and the other accused persons including the present petitioners and as such there is prima facie material.

6. From the perusal of the impugned order, it appears, as pointed out by the counsel for the State that the learned Court below has based its opinion, of there being prima facie case made out against the petitioners for the aforesaid offences on the basis of the materials available in the FIR and in the case diary, particularly the statement of the witnesses recorded in course of investigation. The grounds advanced by the petitioners is that there are contradictions in the statement of the witnesses and the informant and the other witnesses have made a deliberate attempt to improve upon their earlier statements only in order to implicate the present petitioners. These are grounds which could be better appreciated only in course of trial and the benefit thereof can be fully availed by the petitioners by cross examining the several witnesses as to the circumstances in which they had made the incriminating statements against the petitioners in course of investigation. For the present, the materials available in the case diary do prima facie disclose incriminating evidence against the petitioners and do constitute sufficient material for placing the present petitioners on trial for the offences mentioned above.

7. In the light of the discussions made above, I do not find any infirmity or impropriety in the order of the learned Court below and neither do I find any merit in the grounds advanced by the petitioners. Accordingly, this application is dismissed.