
(2005) 02 JH CK 0093
In the Jharkhand High Court
Case No : Criminal M.P. No. 993 of 2003

Fulindar Mahto

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 204, 482
Penal Code, 1860 (IPC) — Section 323, 34, 347, 364, 386

Citation : (2005) CriLJ 4795 : (2005) 3 JCR 444

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : Afaq Ahmad, for the Appellant; APP, P.K. Bhowmik and Md. Hatim for opposite party Nos. 2 to 11, for the Respondent

Final Decision : Dismissed

Judgement

Hari Shankar Prasad, J.—This application u/s 482 of the Code of Criminal Procedure has been filed for quashing the order dated 31st March, 2003 passed in Complaint Case No. 43 of 2002 whereby and whereunder the learned Judicial Magistrate 1st Class, Khunti dismissed the complaint petition under Sections 364/386/323/347/34 of the Indian Penal Code.

2. Facts giving rise to the filing of this application are that on 2-6-2002 the petitioner, who is complainant of complaint case No. 43 of 2002, filed a complaint case stating inter alia therein that he along with his son Shankar Mahto went to village Mal-sining and purchased two ox for Rs. 9.500/-. It is further stated that on the same day one Manoj Kumar Akela @ Chhedi forced him to see the girls for marriage of his son. The complainant and his son found a girl suitable for marriage with Shankar Mahto, then accused No. 1 to 6 Chamru Sao, Dhunuwa Sao Paras Sao., Chhedi @ Manoj Kumar Akela, Baiju Sao and Chhedi Sao for the purpose of marriage, forced the petitioner and his son to raise Panch-Panch (Certain rituals for arrangement of marriage), but complainant somehow managed to prolong the matter and return to the village. But on 9-6-2002 at

2.00 AM in night, one Ramchandra Mahto took petitioner and Shankar Mahto on gun point to panchayat school where 25-30 men assaulted, abused and threatened them to kill and the aforesaid accused persons asked the petitioner-complainant to return 12.000/- which they have spent on marriage arrangement and thereafter the complainant petitioner and his son were taken to village Malasiring where again they were assaulted and abused and at about 6.00 AM in panchayat it was decided to implicate them in dowry case and thereby they were forced to sign a forged document relating to demand of dowry. On 11-6-2002 the complainant-petitioner was forced on gun point to go with Ishwar Mahto to his village to arrange money and thereafter complainant mortgaged his land and returned with Rajendra Ram, Pandu Mahto, Devu Mahto and Ishwar Mahto to village Malasiring where in front of panchayat, money was received by Chunnuwa Sao and Janak Sao. When complainant-petitioner wanted to settle marriage of his son with the daughter of Chamru Sao, then accused persons refused marriage of the daughter of Chamru Sao and abused and threatened them to kill all this family members if the complainant informs the police. On 12-6-2002 complainant and his son Shankar Sao were released as the accused persons got money which they spent during settlement of marriage.

3. It is submitted on behalf of the petitioner that learned Court below has committed error of law in dismissing the complaint. It was further pointed out that the learned Court below has dismissed the complaint after enquiry u/s 202 Cr.PC. on the ground that all the witnesses have not been produced. Another ground for dismissal of the complaint petition is that no independent witness has been examined in inquiry. The another ground for dismissal of complaint petition is that the complainant mortgaged his land to collect money but he has not given details of the land and to whom the land has been mortgaged by the complainant. Witnesses cited in the complainant petition have not been examined.

4. In this connection, it was submitted that so far as non-examination of witnesses is concerned, it is not necessary that at the enquiry stage all such witnesses should be examined and in this connection learned counsel for the petitioner has placed reliance upon G. Subba Naidu and others Vs. Talluri Mahalakshamma and another, , wherein it has been held that it is not necessary for the complainant to produce all witnesses in an enquiry. Reliance was also placed upon Jumrnan and Others Vs. State of U.P. and Another, , wherein same principle has been laid down that it is not necessary to produce all the witnesses in enquiry. It was also pointed out that when according to principle laid down there is no necessity to produce all witnesses for examination, then at this stage it cannot be seen whether witness is competent or not because it is an enquiry and not a trial. It was further submitted that at the present moment learned Magistrate has got only to see whether a prima facie case is made out or not and since two, witnesses have been examined and from examination of these two witnesses a prima facie case is made out and, therefore, Magistrate was duty bound to issue process u/s 204, Cr PC.

5. On the other hand, learned counsel appearing for the opposite parties submitted that learned Court below was very much justified in not proceeding with the matter any further by not issuing summons u/s 204, Cr PC because allegations are so absurd and vague that a prudent man can never believe such things to happen in the society. In this connection he placed reliance upon State of Haryana and others Vs. Ch. Bhajan Lal and others, wherein it has been held that when the allegation is so absurd that a prudent man cannot believe that such things would have happened, then cognizance should be quashed but here in the instant case the learned Magistrate dismissed the complaint petition on the ground of vagueness in the complaint petition.

6. It is true that when the complainant mortgaged his land and obtained Rs. 12.000/- for payment to the accused persons, who have not been proceeded with, it was incumbent upon him to have at least mentioned this fact that he mortgaged the land to so and so because this is a document, which cannot be concealed from the eyes of law or eyes of the person and non-disclosure created a doubt and when at the stage of trial it is found that no such land was mortgaged then it will be deemed that it is an abuse of the process of Court and, therefore, at the first instance besides oral evidence he should have given documentary evidence also by saying that he has mortgaged the land to such and such person.

7. In that view of the matter, I do not find any reason to interfere with the findings of the learned Court below, and therefore, this application u/s 482, Cr PC is hereby dismissed. No order as to costs.