
(2010) 03 JH CK 0058
In the Jharkhand High Court

Girish Kumar Sharan

APPELLANT

Vs

The State of Jharkhand and Prem Lata Hembrom

RESPONDENT

Date of Decision : 22-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 313, 315, 375, 376, 415
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 4

Citation : (2010) CriLJ 4215 : (2011) 1 Crimes 272

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—Both the petitions are taken together almost for the common cause. Petitioner Girish Kumar Sharan has preferred the Cr.M.P. No. 1517 of 2008 by invoking the inherent power of this Court u/s 482 of the Code of Criminal Procedure for quashment of the order impugned dated 15.7.2008 passed in G.R. No. 1276 of 2006, arising out of Gopikandar P.S. Case No. 18 of 2006 by which the Chief Judicial Magistrate, Dumka took the cognizance of the offence under Sections 417/376/315 of the Indian Penal Code against the petitioner and for quashment of his entire criminal prosecution whereas, the Cr. Rev. No. 565 of 2009 is directed against the order impugned dated 7.7.2009 passed in S.C. Case No. 159 of 2009, arising out of above case, by which the 5th Additional Sessions Judge, F.T.C., Durnka, after hearing the parties, found prima facie material to proceed against the petitioner Girish Kumar Sharan for the alleged offences and proposed charges under Sections 376/417/313 of the Indian Penal Code and accordingly, charges were framed for the said offences.

2. Prosecution story in short was that the prosecutrix Prem Lata Hembrom had been visiting the Gopikandar Branch of the State Bank of India with her mother for drawing the family pension of her mother and at that time, the petitioner was the Branch Manager of the said Branch. It was stated that the petitioner had

offered the prosecutrix that he would provide job of peon to her in the Bank which would be regularized after completion of one year of her temporary job. Pursuant to such assurance, she started working as a peon in the said Bank on temporary basis and the Manager-petitioner used to give Rs.800/- per month to her. She alleged that petitioner used to tease her during banking hours, but she tolerated his conduct and after completion of one year of her temporary job, when she requested to regularize her job, the petitioner asked her to come to his residence on Sunday at about 2:00 p.m. situated at Dumka for putting her signatures on some forms. Pursuant to such direction, she visited the house of the petitioner. She found him alone in the house, however, he went out by saying that he was going for consultation and returned quite late in the evening and as there was no bus in the evening for the prosecutrix to return back to her home the petitioner persuaded her to stay there in the night and she stayed. It was alleged that in the night when the petitioner attempted to outrage her modesty, she protested, to which petitioner threatened to satisfy his need otherwise job would not be regularized, finding no way out she succumbed to the demand of physical relationship under pressure and she could not oppose. In the morning, she returned back and the petitioner continued making physical relationship with her at several occasions however, she was threatened to be removed from the job in case of communicating such matter to else. She further alleged that the petitioner even used to visit her house in absence of her parents and there also he used to establish physical relationship with her and once upon a time, when she became pregnant, her pregnancy was terminated at the instance of the petitioner at Siuri (West Bengal). When the petitioner was transferred to Maslia, she was removed from the job by the new incumbent of the Bank, who took charge and even then, the petitioner continued having sex with her on the assurance that he would get her job regularized. The prosecutrix after sometimes realized that she was being physically exploited by the petitioner, then she threatened him that a case would be instituted against him, to which she was asked to do whatever she liked. Then she went to a telephone booth where she came across one Manoj Kumar who introduced her to one Manoj Pandey to whom she narrated the entire occurrence. Finally, she alleged that she was a tribal girl and that the petitioner had established sexual relationship with her for years on the pretext that he would provide job to her and for the act of the petitioner her life was ruined. A case was instituted on the written report of the prosecutrix for the alleged offence u/s 376 of the Indian Penal Code as also under Sections 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and the Deputy Superintendent of Police was assigned to investigate the allegation. Investigating Officer after investigation of the case submitted charge sheet for the alleged offence under Sections 417/376/315 of the Indian Penal Code and accordingly, cognizance of the offence was taken in those Sections by the learned Chief Judicial Magistrate, Dumka.

3. The learned Sr. Counsel Mr. P.P.N. Roy at the outset submitted that no offence under Sections 417/376/315 of the Indian Penal Code was made out against the

petitioner, even on the face value of the allegation as made in the written report by the prosecutrix opposite party No. 2. As a matter of fact, prosecutrix had applied for loan under the Prime Minister Rojgar Yojna Scheme for Rs. 1,00,000/- from the Gopikandar Branch of the State Bank of India where the petitioner was posted as Branch Manager, against which a sum of Rs.76,000/- was sanctioned to the prosecutrix under the Prime Minister Rojgar Yojna Scheme. Since the informant-prosecutrix defaulted in repayment of the instalments, the petitioner requested her by various letters for repayment of loan, to which she contacted the petitioner for the waiver, to which the petitioner declined to do so as against the public policy she was asked to pay back the loan amount plus interest thereon to the Bank. The prosecutrix in league with one Manoj Rai threatened the petitioner either to deposit the entire amount due to her from his own pocket, otherwise rape case would be instituted against him. They started making threatening calls, to which the petitioner had given written information on 3.10.2006 to the Superintendent of Police, Dumka.

4. The learned Sr. Counsel further submitted that petitioner then communicated the matter to the Secretary, Divisional Human Rights Association, Jharkhand at Dumka being fed up with the blackmailing of the prosecutrix and her aid, to which an inquiry was made by the said association which found the allegation of the petitioner against the prosecutrix and Manoj Rai true and then a report was submitted to the President of All India Human Rights Association with the copy to the petitioner after giving him clean chit. Petitioner informed the Superintendent of Police, Dumka as well as the Human Rights Commission, much prior to lodging of the instant case by the prosecutrix. She was aged about twenty-two years, a woman of easy virtue, who implicated the petitioner with the ulterior motive to extort money by showing disinclination to pay back the dues to the Bank. However, in the given facts and circumstances of the case, no offence u/s 376 of the Indian Penal Code could be made out against the petitioner as she admitted to be a consenting party of the sex, above eighteen years of age and the fact could not be disclosed at the earlier occasion before the police. The cognizance of the offence therefore, u/s 376 of the Indian Penal Code and the proposed charge under the said offence would amount to misuse of the process of the Court and injustice caused to the petitioner. No charge sheet was filed u/s 3(X) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Petitioner, who was a responsible Officer of the State Bank of India, was unnecessarily allowed to face the prosecution and persecution of the rigours of trial for the alleged offence and therefore, he may be discharged and his criminal prosecution be quashed.

5. I find from the perusal of the entire materials on the record including the case diary which was called for, that the allegation as levelled by the prosecutrix in the written report presented before the police, does not make out prima facie a case of rape according to its definition as contained in Section 375 of the Indian Penal Code which speaks,

A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

First- Against her will.

Secondly- Without her consent.

x x x

6. Prosecutrix has never stated that force was applied upon her. Yet, she admitted that she conceded to the demand of the petitioner to have physical relationship however, on the assurance and promise that her temporary job would be regularized and that after she was removed from her temporary job by another Branch Manager, she again indulged in sex with the petitioner, as per her case, may be, against the assurance that a new job would be provided to her. She categorically admitted in the written report that she had visited the house where the petitioner used to reside temporarily and that the petitioner also visited her house in absence of her parents and at both the places, sexual relationship was established between the two at several occasions without there being protest raised by the prosecutrix which indicates that she was a consenting and willing party to the sex, and such physical relationship with the consent of the petitioner and the prosecutrix cannot be held to be "rape".

7. I therefore, find and observe that the cognizance taken of the offence u/s 376 of the Indian Penal Code and charge framed against the petitioner for the said offence are not maintainable, accordingly, both are set aside. Similarly, cognizance taken of the offence u/s 315 of the Indian Penal Code and the charge framed therein against the petitioner are also not maintainable in view of the fact that no documentary evidence could be collected in course of investigation in support of the allegation that the pregnancy of the prosecutrix was terminated at the instance of the petitioner. She was even not medically examined by the Doctor or the Board of Doctors and there is no medical report in support of the allegation that her pregnancy was ever terminated at any earlier point of time. As the alleged offence u/s 315 of the Indian Penal Code relates to termination of pregnancy, such offence may be supported through the medical opinion of the registered practitioner and for want of such prima facie material charge cannot be framed in such Section, accordingly the cognizance cannot be taken for the offence u/s 315 of the Indian Penal Code. For the reasons stated hereinbefore the cognizance taken and accordingly charge framed against the petitioner for the offence u/s 315 of the Indian Penal Code are set aside.

8. However, on the face value of the allegation as contained in written report, I find prima facie allegation of cheating against the petitioner that he cheated the prosecutrix. Cheating is defined u/s 415 of the Indian Penal Code which is punishable u/s 417 of the Indian Penal Code. The prosecutrix in her written report had alleged that the petitioner deceived her on the promise to provide her job or that her temporary job of peon would be regularized in due course and

established sexual relationship but never either regularized her job nor provided her a fresh job after termination of job by the new incumbent.

9. In the facts and circumstances, I find a prima facie case for the alleged offence u/s 417 of the Indian Penal Code against the petitioner. Section 417 of the Indian Penal Code is exclusively triable by a Court of Judicial Magistrate of the Ist Class under Chapter-XX of the Code of Criminal Procedure and therefore, the case record of the petitioner arising out of Gopikandar P.S. Case No. 18 of 2006 is directed to be transferred and accordingly, it is transferred to the Court of Chief Judicial Magistrate, Dumka to proceed against the petitioner after framing of charge u/s 417 of the Indian Penal Code in accordance with law.

10. With such modification in the impugned orders, both the Cr.M.P. No. 1517 of 2008 and Cr. Rev. No. 565 of 2009 are allowed in part and disposed of in the manner indicated above.