
(2010) 04 PAT CK 0158
In the Patna High Court

Girja Nandan Sinha

APPELLANT

Vs

State of Bihar and Sujata Devi Choudhary

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Citation : (2010) 04 PAT CK 0158

Judgement

Shiva Kirti Singh, J.—Heard learned Counsel for the petitioner, learned Counsel for the State and learned Counsel for the complainant.

2. The prayer made in this application u/s 482 Cr. P.C. is to quash the order of cognizance dated 19.2.1999 whereby learned Chief Judicial Magistrate, Purnea has taken cognizance of offences u/s 504 and 376/34 of the Indian Penal Code against the petitioner and one another accused named in the complaint petition (Annexure-1).

3. It appears that on 28.2.1996, the present case bearing complaint case No. CA-195/1996 was filed in the court of Chief Judicial Magistrate, Purnea by O.P. No. 2 who alleged that in the evening at about 6:00 P.M. on 26.2.1996 on the pretext of handing over wool for knitting sweater she was called in the house by the two accused persons who on the threat of fire-arms and by use of force committed rape against her. She was allowed to go back to her house after a warning that she should not raise any noise otherwise it would adversely affect her reputation. It is alleged that some how she came back to her house and narrated the entire incident to her mother, Premlata Devi who is the only witness examined at the stage of 202 of the Cr. P.C. It is also mentioned in the complaint petition that she had met one Permanand Yadav who had enquired from her as to why she was crying. As per allegation in the complaint petition, the police refused to entertain any case therefore a petition of complaint was filed in the court.

4. It appears from the record that in absence of any investigation by the police and any medical examination report or any independent witness, learned Chief Judicial Magistrate declined to take cognizance against the accused persons by

his order dated 28.10.1996 which is Annexure-2 to this petition. That order was challenged by the O.P. No. 2 before the Sessions Court at Purnea through Criminal Revision No. 498 of 1996 which was allowed by order dated 6.8.1998. That order is Annexure-3 to this application and shows that the learned Sessions Court did not approve the approach of the learned Magistrate in looking for corroboration from medical evidence which according to Sessions Court was not warranted at the stage of enquiry. The Sessions Court also pointed out that at the stage of enquiry u/s 202 of the Cr.P.C, the Magistrate is not required to evaluate statement of witnesses like in a trial. It was also pointed out that at the stage of enquiry the Magistrate is required only to see whether statement of witnesses corroborated the allegations and whether a prima facie case is made out or not.

5. It is not in dispute that after the order passed by the Sessions Court for further enquiry, notice was issued to the complainant, O.P. No. 2 who took the stand that there was no further evidence to be produced by her. Thereafter, the learned Magistrate had passed the impugned order of cognizance dated 19.12.1999. This order consists of three paragraphs. In the first two paragraphs only the relevant fact such as nature of offence and the earlier order which was set aside by the Sessions Court are referred to in brief. In the last and third paragraph the learned Magistrate has reapplied his mind and held as follows:

Perused the case record as well as the statement of the solitary witness Premrata Devi examined during the course of enquiry under/Section 202 Cr. P.C On perusal of the case record, I find that a prima-facie case for the offence under Sections 504 and 376/34 I.P.C. is made out against the accused persons. Thus, issue summons against the accused persons for their appearance on 27.3.99. The case is kept in my personal file for appearance of the accused and commitment of the case. Complainant to file requisites of notice by the date fixed.

6. Learned Counsel for the petitioner has placed reliance upon a judgment of the Apex Court in the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, and has submitted that paragraph 28 of the said judgment clearly indicates the role of the Magistrate in the following words:

It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

7. According to learned Counsel for the petitioner the learned Magistrate failed to keep in mind the law as settled by the Apex Court in the case of Pepsi Food Ltd (Supra) and proceeded to take cognizance in a mechanical manner only because of order for further enquiry passed by the Sessions Court.

8. On the other hand, learned Counsel for the complainant has submitted that

the offence is of serious nature and at this stage no doubt should be entertained regarding there being a prima facie case only because the allegations levelled by the complainant are being supported only in part by a solitary witness who is complainant's mother. According to the learned Counsel for the complainant, after the order of Sessions Court for further enquiry, the Magistrate rightly asked the complainant to produce further witness if any and since no further witness was available, he had to evaluate the materials on record and on that basis he rightly came to hold that a prima facie case is made out.

9. The issue raised on behalf of the petitioner is, in the facts of the case, a relevant issue as to what should be a role of the Magistrate particularly when the allegations relate to a serious offence and the matter was remanded for further enquiry pointing out the defect in the earlier approach of the Magistrate. In such a situation, the learned Magistrate ought to have avoided taking a mechanical approach and should have exercised his role of holding further enquiry meaningfully. For further enquiry, the learned Magistrate, as observed by the Apex Court should have carefully scrutinized the evidence and more importantly, may even himself put questions to the complainant and the only other witness with a view to find out the truthfulness of the allegations or otherwise.

10. In the facts of the case, this Court is satisfied that the order for further enquiry passed by the Sessions Court was not carried out in true spirit and the learned Magistrate acted more like a spectator than a Judicial Officer required to probe further with a view to find out truthfulness or otherwise of the allegations. Hence, the impugned order of cognizance is quashed and the matter is remanded back to the learned Magistrate for further enquiry.

11. It is made clear that this Court has not considered the matter on merits and no observations in this order shall prejudice the case of either of the parties.

12. As submitted by the learned Counsel for the State, it is made clear that at the stage of cognizance the accused has no locus standi.