
(2009) 05 JH CK 0141

In the Jharkhand High Court

Case No : Criminal Revision No. 576 of 2008

Guddi @ Farhat Parveen and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 26-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 239

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 37

Citation : (2009) 05 JH CK 0141

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Advocate : Gautam Kumar, Rajesh Kumar and S.S. Choudhary, for the Appellant; Nitu Sinha, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Jaya Roy, J.—The petitioners have preferred this criminal revision for setting aside the order dated 28.4.2008 passed by the Sub-Divisional Judicial Magistrate, Sahibganj in G.R. Case No. 170 of 2005 whereby he has rejected the petition filed on behalf of the accused (petitioner) u/s 239 Cr.P.C.

2. Prosecution case in nutshell is that the informant Rizwana Parvin lodged a written report before the O/C Town P.S. stating therein that she was married to Md. Masrur Alam. On 15.2.1999 at the time of her marriage her father gave 220 gr. gold, 800gr. Silver, Jewellery, apart from 75,000/- cash. The informant went to her matrimonial house where she realized that she was married to a greedy family. Few days after her marriage, her mother-in-law and sister-in-law took away her ornaments and started demanding Rs. 3,00,000/- as they wanted to purchase a flat in the name of her husband. When the informant protested, all her in-laws, her husband started assaulting her. In the meantime, the informant was pregnant, she informed about the torture to her father at which her father came to her in-laws house. The informant was assaulted by the accused persons to such an extent that she had a miscarriage. The second time when she became

pregnant, she came to her parents house and on 3.11.2001 she gave birth to a male child at Sahibganj. The in-laws family was informed about the birth of a child but none turned up to see the child. Her husband visited Sahibganj after great efforts made by the informant's father but the behavior did not change and he assaulted her and demanded Rs. 3,00,000/-. The informant's husband used to visit her from time to time. On 26.6.2003 she gave birth to second child. At this time her in laws visited her but they misbehaved with her parents and assaulted her. The accused persons tried to take away her first son with them. The informant again pregnant but due to assault the child in womb had adverse impact, had died within eight hours of his birth.

3. Mr. Rajesh Kumar the learned Counsel of the petitioners, submits that there is no direct/specific allegation against any of the petitioners rather general and omnibus allegations were made against them. He has further submitted that the petitioner Nos. 3 to 6 are residing at Kolkata and they have been falsely implicated in this case only to harass and humiliate them. His further contention is that the learned trial court has mechanically rejected the discharge application preferred on behalf of the petitioners.

4. From the impugned order and from the case diary, I find that the witnesses have supported the prosecution case. The independent witness namely Salimuddin has also supported the prosecution case. From the impugned order I find the petitioners have filed the petition u/s 239 Cr.P.C. in the trial court. Upon which the impugned order was passed by the trial court. The Section 239 of the Cr.P.C. shows:

When accused shall be discharged.- If, upon considering the police report and the documents sent with it u/s 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

Therefore the Magistrate is obliged to record his reasons if he decides to discharge the accused.

5. The Hon'ble Supreme Court in the case of Kanti Bhadra Shah and Another Vs. The State of West Bengal, has observed:

If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed

order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial. It is a salutary guideline that when orders rejecting or granting bail are passed, the court should avoid expressing one way or the other on contentious issues, except in cases such as those falling within Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

6. Therefore, as there is sufficient material on record against the petitioners, I do not find any reason to interfere with the impugned order. The Hon"ble Apex Court has observed in a number of cases that at this stage the court is not to see whether the sufficient ground for conviction of the accused or whether the trial is sure to end in conviction. If there is sufficient material which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to discharge the accused persons.

7. Having considered the fact and circumstances of the case and the law settled by the Hon"ble Apex Court, I find no merit in this application. Accordingly, the revision application is dismissed.