
(2016) 01 JH CK 0178

In the Jharkhand High Court

Case No : Criminal Revision No. 282 of 2015

Hakim Mian @ Hakim Ansari

APPELLANT

Vs

State of Jharkhand and others

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 307

Citation : (2016) 2 ECrC 297 : (2016) 1 JBCJ 523 : (2017) 1 JLJR 102

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : Mr. Vikash Kishore, A.P.P. and Kaushik Sarkhel, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ravi Nath Verma, J. - Invoking the revisional jurisdiction of this Court under Sections 397 and 401 of the Code of Criminal Procedure (in short the Code), the petitioner Hakim Mian @ Hakim Ansari has questioned the legality of the order dated 19.06.2014 passed by the learned Sessions Judge, Jamtara in Criminal Revision No. 14 of 2014 whereby and where under the Revisional Court has set aside the order taking cognisance dated 23.04.2014 passed by the learned Chief Judicial Magistrate, Jamtara in G.R. Case No. 610 of 2013 arising out of Jamtara P.S. Case No. 207 of 2013 and remanded the case with direction to pass appropriate reasoned order.

2. On the basis of the fardbeyan of the informant Hakim Mian @ Hakim Ansari, the aforesaid F.I.R. was lodged under Sections 147, 148, 149, 341, 323, 325, 326, 307, 504 and 506 of I.P.C. but after investigation, the police submitted the charge sheet against all the accused persons under Sections 147, 148, 149, 341, 323, 325, 504 and 506 of I.P.C. However, the learned Chief Judicial Magistrate vide order dated 23.04.2014 took cognisance of offence under Section 307 of I.P.C. also besides the above sections. Aggrieved by the said order of taking

cognisance under Section 307 of I.P.C., the accused preferred a criminal revision bearing no. 14 of 2014 before the Court of Sessions Judge, Jamtara and after hearing the parties, the court below set aside the order of taking cognisance holding that while differing with the police report, the court has not assigned any cogent reason for taking cognisance of offence under Section 307 I.P.C. also and remanded the matter to the court concerned with direction to pass appropriate reasoned order after proper appreciation of the prima-facie evidence available on the record. The informant being aggrieved by the said order has preferred this criminal revision application.

3. Mr. P.P.N.Roy learned senior counsel appearing for the petitioner assailing the order impugned as bad in law and perverse seriously contended that the court below without following the mandate of Section 460(e) of the Code has set aside the order taking cognisance and even if the cognisance of offence was taken erroneously by the Magistrate, the order cannot be set aside. Learned senior counsel further relying upon the case *Dharam Pal and others v. State of Haryana* and another; (2014) 3 SCC 306 submitted that the Hon''ble Supreme Court while accepting the view expressed in *Kishun Singh v. State of Bihar*; (1993) 2 SCC 16 has held that the Magistrate has ample powers to disagree with the final report that may be filed by the police authorities under Section 173 (2) of the Code and to proceed against the accused persons dehors the police report. It was also submitted that in the instant case also, the Magistrate while differing with the police report under Section 173(2) of the Code took cognisance of offence under Section 307 I.P.C. also. The Magistrate has jurisdiction to ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation. It was not necessary for the Magistrate to assign the reason for taking cognisance under Section 307 I.P.C. and the Magistrate had only to take into account the statements of witnesses examined by the police during investigation.

4. Contrary to the aforesaid submissions, the learned counsel appearing for the opposite parties and the learned A.P.P. for the State relying upon the case *M/s. G.H.C.L. Employees Stock Option Trust v. M/s. India Infoline Limited*; 2013(2) East Cr.C. 326 (SC) submitted that in the said case, the Hon''ble Supreme Court held that in the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against respondent nos. 2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors, which is sine qua non for initiating criminal action against them. It was also submitted that the revisional court by order impugned has simply directed the court below to pass a fresh order assigning reason, which is mandatory while differing with the police report.

5. In context of the above submission, notice needs to be taken of the case *M/s. G.H.C.L. Employees Stock Option Trust* (supra) wherein the Hon''ble Supreme Court has held as under:

"In the order issuing summons, the learned Magistrate has not recorded his

satisfaction about the prima facie case as against respondent nos. 2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them."

Since the learned Magistrate had not recorded his satisfaction about the prima facie case and directed to issue summons, on that ground, the said order of the learned Magistrate was dismissed holding that the Court has to record satisfaction and assign reason while holding the prima facie case against the accused.

6. Apparently in the instant case, while taking cognisance, the learned Chief Judicial Magistrate has not assigned any reason for taking cognisance under Section 307 I.P.C. also while differing with the police report submitted under Section 173(2) of the Code. The Revisional Court by the order impugned has rightly remanded the case to the court concerned to pass appropriate reasoned order after proper appreciation of the prima facie evidence available on the record.

7. In view of the discussions made above, I do not find any illegality or impropriety in the order impugned. Hence, this revision application, being devoid of any merit, is, hereby, dismissed.