
(2003) 04 JH CK 0064

In the Jharkhand High Court

Case No : Criminal M.P. No. 903 of 2002

Harballava Chandra Prasad

APPELLANT

Vs

The State of Jharkhand and Ajay Kumar Sinha

RESPONDENT

Date of Decision : 24-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2003) 2 BLJR 1206

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : Mahesh Kumar Sinha, for the Appellant; A. Jha, for O.P. No. 2 and R. Kumar, for the Respondent

Final Decision : Allowed

Judgement

Hari Shankar Prasad, J.—This application u/s 482 of the Code of Criminal Procedure, 1973 has been filed for quashing the order dated 22-7-2002 whereby the learned Court below below has taken cognizance under Sections 323 and 379/341 PC.

2. Prosecution case in brief is that O.P. No. 2 Ajay Kumar Sinha filed a complaint petition in the Court of learned Chief Judicial Magistrate, Ranchi against the petitioner and two others under Sections 452, 323 and 379 of the Indian Penal Code for occurrence dated 5-5-2002 at 3.00 p.m. alleging therein that complainant is the son-in-law of the petitioner and that on 5-5-2002 at about 3.00 p.m., petitioner along with two other accused persons in a Maruti Van came to the house of the complainant and told him that they have come to take the wife and children of the complainant because there was marriage of Saali of the complainant in the house of accused persons. The daughter of the complainant who was aged six years old and was a student of class I in Sacred Heart School, Hulundo had to appear in the examination on 6-5-2002 and as such, the complainant requested the accused-person not to take away his family and

promised that they will attend each and every function later on. On this, accused-persons became angry and started abusing the complainant but the complainant requested the accused-persons not to abuse him and also asked them to leave his house, Further case of the complainant is that petitioner and two other accused-persons went away out of his house and again came back with chain in the hands of petitioner, iron rod in the hands of accused No. 2 and tangi in the hands of accused No. 3 and all of a sudden, petitioner assaulted complainant with chain while accused No. 2 assaulted complainant with iron rod on his head causing bleeding injury and accused No. 3 took out Rs. 5,000/- from the pocket of complainant which was kept for giving presentation to his Saali, Wife and children of the complainant started crying and the neighbours arrived there and saved the complainant while the petitioner and two other accused-persons filed away on their Maruti Van bearing Registration No. BR-14J 4180 and also carried away his wife and children. Complainant with the help of the witnesses was taken to Chuita police station but police did not hear anything because accused-persons were also there. One witness Pradip Kumar took the complainant to Sadar Hospital, Ranchi and six stiches were applied on the head of the complainant next day on 6-5-2002. After discharge from the hospital, he again went to the police station but the police refused to take the report and assured the complainant that they will make an inquiry into the matter and then case will be lodged but the police did not come and thereafter, complainant has filed this complaint case and the complaint case was transferred to the Court of Smt. Radha Srivastava, Judicial Magistrate, 1st Class, Ranchi for inquiry and trial and she was pleased to examine the complainant on 3-6-2002 and after holding inquiry u/s 202 IPC examined three witnesses and was pleased to take cognizance of the offence under Sections 323 and 379/34 IPC.

3. It is submitted on behalf of the learned Counsel for the petitioner that the story hatched up by the complainant is most unbelievable and even a mad man cannot behave in the way the petitioner Harballava Chandra Prasad is said to have behaved with his own son-in-law. Learned Counsel further pointed out that the petitioner had gone for inviting complainant for attending the marriage of his daughter and for facilitating the journey by their car. But it appears from the complaint petition that they had gone fully prepared to assault the complainant as it appears from complaint petition that just after exchange of hot words, petitioner went back and brought chain, accused No. 2 brought iron rod and accused No. 3 brought tangi and it so appears that they had come fully prepared with those weapons knowing fully well that such an ugly scene they would have to face and they had come prepared not for inviting complainant who is the son-in-law of the petitioner and other family members who are none less than daughter and grand maternal children. Learned Counsel further pointed out that it is very ridiculous to note that as per complaint petition, complainant was brutally assaulted resulted in bleeding injury on his head but his wife and children went away with the petitioner leaving complainant to his fate, this makes the whole case unbelievable. It was also submitted that the complainant

was the medical representative at the time of marriage and due to some reason, he was removed from the service and, therefore, petitioner accused, who is father-in-law of the complainant, had to spend lot in establishing him in the business of medicine shop and he has filed this case for extracting money from his father-in-law who is petitioner.

4. On the other hand, learned Counsel for the O.P. No. 2 submitted that the petitioner is a man of belligerent nature and he is in habit of making unnecessary interference in the happy conjugal life of O.P. No. 2 and due to this very nature, the family life of eldest sister of wife of complainant has become miserable and marriage in between her eldest sister and her husband has been dissolved. Learned Counsel further submitted that inspite of repeated requests, the petitioner did not relent and thereafter, started abusing complainant and ultimately brought weapons and assaulted the complainant. Learned Counsel further submitted that cognizance in the case has been taken after inquiry u/s 202 Cr. P.C. and there is nothing, which warrants interference of the High Court. In this connection, he placed reliance upon *Raj Lakshmi Mills v. Shakti Bhakoo*, (2002) 8 SCC 236 wherein it has been held that trial Court order summoning the accused requires interference by High Court on assumption of certain facts is impermissible. In this connection, Para 4 of the case is quoted herein below:

"4. We are of the opinion that at the stage of summoning when evidence was yet to be led by the parties, the High Court could not on an assumption of facts come to a finding of fact that the respondent was not responsible for the conduct of the business, On this ground alone, these appeals are allowed and the impugned decision of the High Court is set aside".

Learned Counsel further placed reliance upon 2001 (2) E C C 330 (Pat) in which it has been held that on a petition filed under Sections 482 and 294 Cr. P.C., no interference is required in the impugned order. Learned Counsel for the O.P. No. 2 further placed reliance upon *A.V. Mohan Rao and Another Vs. M. Kishan Rao and Another*, in which it has been held that power should be exercised sparingly by High Court and in this very case, a complain was lodged by the director of the company against other director of the company alleging commission of offence and summons issued by Special Judge requiring accused director to appear in person before the Court. A petition was filed by the accused u/s 482 Cr. P.C. for quashing the proceeding, inter alia, on the ground that no offence was committed by the accused persons. It was held that a prima facie case is made out and by not interfering in the impugned order High Court did the right thing. Learned Counsel further pointed out that from the Inquiry conducted u/s 202 Cr. P.C., witnesses were examined and they have supported the case, besides there is documentary proof of the medical report issued by Government doctor and that there is no ground for interfering in the impugned order which has correctly been passed after finding a prima facie case to have been made out and, therefore, this quashing application is fit to be dismissed.

5. Considering submissions of the parties and perused the complaint petition, the

Apex Court while deciding criminal appeal No. 99/1976 in the case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, had come to a finding that order of the Magistrate issuing process against the accused can be quashed or set aside in the following circumstances.

"(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like".

6. Similarly, the Apex Court while deciding the Criminal Appeal No. 5412/1990 in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, (Supreme Court) had come to a finding that in following categories of cases, the High Court in exercise of power under Article 226 of the Constitution of India or u/s 482 Cr. P.C. may interfere in a proceeding relating to the cognizable offence to prevent abuse of the process of the Court or otherwise to secure ends of justice. But Apex Court cautioned that power should be exercised sparingly and that too in rarest of rare cases. The Apex Court listed circumstances when such an order under Article 226 of the Constitution of India or u/s 482 Cr. P.C. may be exercised by the High Court, which are quoted herein below:

"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and

inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceedings is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge".

7. From the circumstances listed in both the judgment of the Apex Court (supra) it appears that if the allegation is found to be absurd, then High Court can exercise power under Article 226 of the Constitution of India and u/s 482 Cr. P.C. and from the contents of the complaint petition it will appear that allegations are not only absurd but most absurd and all those documents have been manufactured with the help of other persons because the complainant deals in business of medicine and by exercising his influence as a medicine dealer, he has got those documents prepared.

8. In that view of the matter, I am of the view that since the allegations are unbelievable the order requires interference by the Court. This criminal miscellaneous petition is allowed and overtaking cognizance dated 22-7-2002 is hereby quashed. But in the circumstances, there will be no order as to costs.