
(2005) 03 JH CK 0060
In the Jharkhand High Court
Case No : Writ Petition (Cri) No. 21 of 2004

Indrajit Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 197, 202, 323, 380, 409

Citation : (2005) 3 JCR 169

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : K. Roy and R.M. Singh, for the Appellant; M.K. Laik and R. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Hari Shankar Prasad, J.—This application under Article 226 of the Constitution of India has been filed for quashing the order dated 24.10.2003 passed in Cr. Revision No. 72 of 2002, whereby and whereunder the learned Additional Judicial Commissioner, FTC VI, Ranchi allowed the revision and set aside the order taking cognizance dated 18.7.2002.

2. Facts leading to the filing of this application are that on 7.3.2002 at about 12 noon the police personnel of Jagarnathpur P.S. along with accused persons 1 to 4 forcibly entered into the house of the complainant after breaking open the rooms of the house and removed the household properties of the complainant. It is alleged that at that time Uma Shankar Singh and Shatrughan Pandey were in the house of the complainant, who were forcibly removed from the house by the police and accused 1 to 4. It is alleged that police personnel did not give any information to these persons regarding forceful entry into the house and removal of property belonging to the complainant. The accused 1 to 4 conspired with the police personnel of Jagarnathpur P.S., who were shown accused Nos. 5 to 8 in the complaint petition and all the accused persons illegally removed the house

hold properties of the complainant. It is said that accused 1 to 4 are tenants of the complainant and complainant asked them to vacate the house which is under their illegal tenancy and accused persons instead of vacating the premises of the complainant conspired with accused Nos. 5 to 8 with a purpose of constructing a wall. The complainant was out of Ranchi and when he returned back, he came to know about the incident and he went to the Court to enquire into the matter and came to know there that a case was lodged by the accused at Jagarnathpur PS in which Jagarnathpur Police has obtained processes under Sections 82 and 83, Cr PC for attachment being Jagarnathpur P.S. No. 158/2001. The complainant obtained a list of attachment of the properties from the Court and came to know that valuable articles and small blue box containing Rs. 1,07,500/- has not been entered into the list of attachment of property submitted in the Court. Uma Shankar Singh and Satrughan Pandey informed him that blue bag containing money was personally removed by Sri Anil Kumar Dewedi, Officer-in-charge of Jagarnathpur P.S., who removed the same during operation of attachment. On approaching of the relatives of the complainant, the officer-in-charge Sri Anil Kumar Dewedi told them that first they should get bail of the complainant then the bag shall be returned to the complainant. The complainant was released on bail in Jagarnath P.S. Case No. 158/2001 and approached Sri Anil Kumar Dewedi and submitted bail order of the Court to him. The Officer-in-charge torn down the bail order and threatened the complainant not to raise any question of money otherwise he will be sent to jail in another case. New tyres and battery of his car have been removed and in their places old tyres and battery were replaced. The matter was reported to the SSP, Ranchi, who assured them that after bail of the complainant the articles attached shall be released to him by the Court and the valuable articles including the blue bag containing Rs. 1,07,500/-, which was not entered into the list of attachment by the police then how the Court will release the same. The SSP, Ranchi neither enquired into the matter nor lodge any case against the offender. When no action was taken by the SSP, Ranchi then complainant filed a complaint case being Complaint Case No. 290/2002 and after evidence taken by the trial Court on SA, cognizance under Sections 323 : 380 : 409 and other sections has been taken by order dated 18.7.2002.

3. Being aggrieved by the order taking cognizance, the accused persons preferred Cr. revision No. 72/2002 and the Additional Judicial Commissioner by order dated 24.10.2003 allowed the revision and set aside the order taking cognizance dated 18.7.12002.

4. Learned counsel for the petitioner submitted that the learned trial Court had taken positive view and on the basis of S.A. and inquiry held u/s 202 Cr PC, came to a finding that prima facie case is made out and thereafter took cognizance by order dated 18.7.2002, but the learned revisional Court took erroneous view of the matter and after discussing evidence threadbare, came to a finding that cognizance taken by the learned Court below was not proper and misconceived and, thereby set aside the order taking cognizance. It was further pointed out that basic principle of proceeding in the matter is that the Court has

to see whether a prima facie case is made out or not and on the basis of evidence of witnesses recorded u/s 202 Cr PC, a prima facie case was made out on behalf of the petitioner and, therefore, the learned Court below took cognizance on the basis of evidence that came after inquiry, but besides that, there was no material before the learned revisional Court and the learned revisional Court ought to have dismissed the revision but unfortunately, the revisional Court took the view otherwise and set aside the cognizance order. It was further pointed out that from the materials on record, a prima facie case is made out and whatever defence the accused persons were taking, that could have been taken at the stage of trial and not at the inquiry stage. It has been further submitted that from the materials on record, it has been established by the complainant-petitioner that one yellow bag was taken away by the officer-in-charge, namely, Anil Kumar Dwivedi, but that bag was not mentioned in the list of articles seized from the residence of the complainant-petitioner and when this fact became clear after surrender and getting bail, the complainant-petitioner prayed for release of the articles seized in connection with execution of process under Sections 82 and 83 of the Code of Criminal Procedure, then it transpired that yellow bag which contained a sum of rupees one lakh and odd was not shown in the list of articles seized and when the petitioner-complainant demanded the same from the Officer-in-charge, then he was threatened with dire consequences and when the matter was brought to the knowledge of S.P. but even then no action was taken. Then seeing no option left, the complainant-petitioner filed this complaint case with the allegation which have been substantiated in the statements of witnesses recorded u/s 202 Cr PC.

5. It was further pointed out that since police personnel are said to have entered the premises in due discharge of their official duty and for their prosecution, sanction u/s 197 Cr PC should be obtained but it is not necessary that sanction should be obtained at the earliest stage but that sanction may be obtained at any stage of trial or at the end of the trial and for that, cognizance cannot be quashed and in such situation, opportunity should be given to the complainant-petitioner to obtain sanction because, for prosecution of a Government servant including police personnel, so much time takes place for obtaining sanction. In this connection, reliance was placed upon the case of Raj Kishor Roy Vs. Kamleshwar Pandey and Another, wherein it has been held that quashing or taking cognizance of such complaint in absence of sanction to prosecute, then it was held improper and it was further held that in such case, question whether accused officer had acted in official course of duty or not and, whether "therefore" sanction is necessary or not, should be left open to be decided in the main judgment which may be delivered upon conclusion of trial. Reliance was also placed upon the case of P.K. Pradhan Vs. The State of Sikkim represented by the Central Bureau of Investigation, wherein it has been held that for sanction to prosecute, this section imposes prohibition on Court from taking cognizance and for necessity of sanction, there must be reasonable connection between act complained of and official duty. It was further held that sanction to prosecute

need not always be decided as preliminary issue in cases where such question cannot be decided without giving opportunity to defence to establish that act, was done in discharge of official duty or not and question can be left open for decision on conclusion of trial. It was further submitted that the sanction to prosecute police personnel is to be left open and that can be decided on the conclusion of trial whether the act, complained of was in discharge of official duty or not.

6. It was further pointed out that the learned revisional Court went beyond their jurisdiction and discussed the evidence threadbare and after scrutinizing evidence of witnesses recorded u/s 202 Cr PC, came out with a different view that witnesses have not supported the case. This is not the duty of the revisional Court to enter into scrutinizing the evidence thoroughly, but the Court has to see whether on the basis of statements recorded u/s 202 Cr PC, a prima facie case is made out or not and instead of going through in all aspect of the matter, the learned revisional Court erroneously entered into merit of the evidence of the witnesses and came to a finding otherwise and wrongly decided the matter.

7. On the other hand, learned counsel appearing on behalf of the respondents submitted that so far as police personnel were concerned, they had entered the house in due discharge of their duty because they had gone to execute process issued by the Court under Sections 82 and 83 of the Code of Criminal Procedure as the complainant-petitioner was absconding and was avoiding arrest in pursuance of warrant issued against him and, therefore, they had gone in due discharge of their official duty and other respondents were assisting the police personnel in execution of process issued under Sections 82 and 83 of the Code of Criminal Procedure and, therefore, none of them is liable for commission of any offence. Since it has been stated in the complaint that no doubt, a false case was instituted against the complainant-petitioner but even if that case is false, that has not been instituted by the police personnel-respondent No. 6 and in that case, the Court had issued warrant and when complainant-petitioner was avoiding arrest, then in order to compel his appearance, process under Sections 82 and 83 of the Code of Criminal Procedure were issued and in compliance of the order of the Court, the police personnel had gone there with independent witnesses assisted by other respondents and, therefore, none of them can be said to have committed any offence. It was further pointed out that it is very easy to say that this or that article has been taken away by the police, but the independent witnesses who were witnesses to the seizure list, have not stated that there was any yellow bag which was taken away personally by the officer-in-charge, but due to some sort of litigation is going on between other respondents and complainant-petitioner and police personnel in due discharge of official duty, had executed process issued under Sections 82 and 83 of the Code of Criminal Procedure, the complainant-petitioner in order to teach lesson and harass them, lodged a false case against the police personnel and other respondents.

8. From perusal of materials on record, it is clear that case laws cited on behalf

of the complainant-petitioner are not applicable in the facts and circumstances of this case because in one case there was allegation that police personnel themselves placed firearms in the house and thereafter made raid and arrested the person and falsely implicated him. But here in the instant case, it is different from the case laws cited that the police personnel had gone for execution of process issued under Sections 82 and 83 of the Code of Criminal Procedure in due discharge of their official duty and, therefore, it cannot be said that the matter should be left open for coming to conclusion that whether they had gone in due discharge of official duty or not, as nowhere it is alleged that no process under Sections 82 and 83 of the Code of Criminal Procedure were issued against the petitioner-complainant; rather submission is that he had filed a petition for release of the articles seized in connection with execution of process issued under Sections 82 and 83 of the Code of Criminal Procedure and further that he appeared and got bail, this is enough to show that house of the complainant-petitioner was searched in due compliance of the order of the Court and they had gone there in due discharge of their official duty and this matter is not to be examined at the stage of trial.

9. From the discussions made above, I am of the view that though the learned revisional Court went beyond jurisdiction in scrutinizing the evidence threadbare, but the finding arrived at by the revisional Court is just and proper. In that view of the matter, there being no merit in this application, which is accordingly dismissed, but in the circumstances no order as to costs.