
(2015) 02 JH CK 0073
In the Jharkhand High Court
Case No : Criminal M.P. No. 833 of 2002

Ismail Sk. and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202
Penal Code, 1860 (IPC) — Section 147, 307, 323, 34, 379

Citation : (2015) 02 JH CK 0073

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Rajesh Kumar, for the Appellant; Sadhna Kumar, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J.—Heard Mr. Rajesh Kumar and Mrs. Sadhna Kumar, learned counsel for the State. No one appears on behalf of O.P. No. 2.

2. In this application, the petitioners have prayed for quashing the entire criminal proceeding as well as quashing the order dated 6.8.2002 in connection with PCR Case No. 80 of 2002, passed by learned Sub-Divisional Judicial Magistrate, Rajmahal, whereby and whereunder cognizance for the offence under sections 147, 323 and 379 of the Indian Penal Code has been taken as against the petitioners.

3. A complaint petition was filed by the complainant-opposite party No. 2 herein, in which it was stated that he had gone to Hiranpur Cattle Market on 14.5.2002 and had sold a pair of milching buffaloes and while he was returning home along with the money obtained through selling of the said buffaloes, the accused persons all of a sudden surrounded him and forcibly had taken away the cash of Rs. 25,000/- as well as a wrist watch. It was also alleged that while committing the crime, the accused persons had told the complainant that they realised the marriage expense of Manswar Bibi.

4. After an enquiry was conducted under section 202 Cr.P.C. by examining the complainant on solemn affirmation and also his witnesses, cognizance was taken by the learned Sub Divisional Judicial Magistrate, Rajmahal on 6.8.2002 for the offences punishable under sections 147, 323 and 379 of the Indian Penal Code.

5. Learned counsel for the petitioners has submitted that the present case i.e. PCR Case No. 80 of 2002 has been instituted as a counter blast to PCR Case No. 77 of 2002, which was instituted by the wife of the complainant namely Manswar Bibi and which was filed prior to the present complaint case. He has further submitted that petitioner No. 1 is the father in law of the complainant, whereas the petitioner Nos. 2 to 5 are the brothers of petitioner No. 1 and petitioner No. 6 is the son of petitioner No. 1. He, thus, submits that only with a view to implicate all the family members out of grudge on account of the criminal case instituted by his wife, the complainant had lodged the present case.

6. Learned counsel for the State, on the other hand, has submitted that there are specific allegations against all the petitioners of forcibly taking away Rs. 25,000/- from the person of the complainant and, therefore, the allegations for the offence punishable under sections 147, 323 and 379 of the Indian Penal Code are made out against the petitioners.

7. After hearing learned counsel for the parties and after going through the records, I find that daughter of petitioner No. 1 and the wife of the complainant-opposite party No. 2 herein namely Manwara Bibi had instituted a complaint case being PCR Case No. 77 of 2002 on 12.03.2002, wherein the complainant-opposite party No. 2 and his mother were made an accused for the offences punishable under sections 498A, 323, 379, 307/34 of the Indian Penal Code. It further appears that vide order dated 27.06.2002, the learned Sub-divisional Judicial Magistrate, Rajmahal was pleased to take cognizance against the complainant-opposite party No. 2 herein and his mother in PCR Case No. 77 of 2002 for the offences under sections 498A, 323, 379 and 440 of the Indian Penal Code. It, thus, appears that PCR Case No. 80 of 2002 was filed on account of animosity, which the complainant-O.P. No. 2 was having with his in-laws and in order to implicate all of them, reckless allegations have been made in the complaint petition. If the complaint petition of PCR Case No. 80 of 2002 is taken into consideration in the backdrop of PCR Case No. 77 of 2002, it can be deduced that the same has been filed with a malicious intent and only with a view to wreak vengeance upon the in-laws of the complainant-opposite party No. 2 herein. It would appear that the present petition is a vexatious prosecution only with a view to malign the petitioners being the in-laws of the complainant-opposite party No. 2 and such criminal proceeding should not be allowed to be continued.

8. In view of what has already been discussed above, this application is allowed. The entire criminal proceeding as well as the order dated 6.8.2002 in connection with PCR Case No. 80 of 2002, passed by learned Sub-Divisional Judicial Magistrate, Rajmahal, whereby and whereunder cognizance for the offence under

sections 147, 323 and 379 of the Indian Penal Code has been taken as against the petitioners, are ordered to be quashed.