
(2016) 01 JH CK 0043
In the Jharkhand High Court
Case No : Criminal Revision No. 346 of 2015

Jai Prakash Modi @ Prakash Modi and other	APPELLANT
Vs	
State of Jharkhand	RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2016) 2 ECrc 39 : (2016) 3 JBCJ 461 : (2016) 2 JLJR 197

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : B.M. Tripathy, Sr. Advocate, Naveen Kumar Jaiswal & Nutan Kumari Sharma, Advocates, for the Appellant; Rakesh Kumar, A.P.P, 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 petitioners have questioned the legality of the order dated 26.02.2015 passed by the learned Additional Sessions Judge-V, Giridih in Sessions Trial No. 167 of 2014 whereby and where under while rejecting the prayer for discharge of one of the accused Binod Paswan, the court below took cognizance of the offence under Section 302/34 I.P.C. and also under Section 27 of Arms Act against the above petitioners and directed to issue summons against them for framing of charge.

2. The factual score as depicted in the F.I.R. lodged at the instance of the informant Md. Mazhar Ansari is that on 16.04.2011, his father had gone to Palaungia Hat for selling mutton and at about 6:45 p.m., one of his friend Md. Sheraj informed him on telephone that his father had met with an accident under Batlohia river bridge. Where after the informant along with co-villagers rushed to the said place but on way he met with his friend, who had called him on phone and thereafter they brought his father on motorcycle, but by that time, his father

had died. The informant noticed two fire arm injuries on the back from where blood was oozing out and came to know that his father was shot dead. The informant raised his suspicion against Prakash Modi, Rameshwar Modi (since deceased), Dashrath Modi and Shankar Rana the three petitioners as there was some existing land dispute between the parties.

3. During the investigation, police found the involvement of all the four accused persons in committing murder of Niyamat Ali, the father of the informant, due to land dispute but subsequently as the investigation progressed, the call details report (C.D.R.) of a mobile phone was obtained from which the informant was getting threatening calls not to marry Sagira otherwise he would also be killed. It was found that the mobile was being used by one Binod Paswan, a co-accused, and finally the police after investigation came to the conclusion that the said Binod Paswan, who was giving tuition to Sagira for the last more than two years, had developed some intimate relationship, which was objected by the father of the informant Niyamat Ali where after he was killed. The police after investigation submitted the charge sheet against Binod Paswan and found the case as not true against the present petitioners and submitted final form against them. The concerned court took cognizance of the offence and committed the case of Binod Paswan to the court of sessions. Before the Court of Session, a petition under Section 227 of the Code was filed by the said accused Binod Paswan, which was rejected by the order impugned but the court finding sufficient materials and involvement of the present petitioners in the alleged offence due to prior land dispute and litigation, took cognizance of the offence and directed to issue summons as indicated above relying upon the judgment of the Hon'ble Supreme Court in the case *Dharam Pal and others v. State of Haryana and another*; (2014) 3 SCC 306. Hence, this revision.

4. Mr. Tripathy learned senior counsel appearing for the petitioners while assailing the order impugned as perverse and bad in law seriously contended that the court below grossly erred in issuing summons to the petitioners without following the procedures as provided in the Code. It was also submitted that the court below has misconstrued the provisions conferred under Section 193 and 209 of the Code and wrongly exercised his power and took cognizance of offence and summoned the petitioners and also miserably failed to appreciate that the Investigating Officer had rightly submitted the final form against the petitioners finding no sufficient ground to proceed. Learned senior counsel further submitted that the court below by inventing a third story summoned these petitioners to appear for framing of charge and there is absolutely no evidence on record to show the complicity of these petitioners in the alleged crime. Hence, the order impugned is fit to be set aside.

5. Refuting the above submissions, the learned counsel representing the State relying upon the ratio decided in the case *Kishun Singh v. State of Bihar*; (1993) 2 SCC 16 and considered subsequently in *Dharam Pal* (supra) contended that the court below has not at all invented any third case rather relying upon the

evidence collected during investigation took cognizance of the offence and issued summons to the petitioners to face trial and there was no occasion for the court below to wait till the stage under Section 319 of the Code.

6. In the case *Dharam Pal* (supra), the Hon''ble Supreme Court while dealing with almost the similar situation and issue involved held in paragraphs 40, 41 and 42 as follows:

"40. In that view of the matter, we have no hesitation in agreeing with the views expressed in *Kishun Singh* case that the Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Sessions Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.

41. We are also unable to accept Mr. Dave's submission that the Sessions Court would have no alternative, but to wait till the stage under Section 319 Cr.P.C. was reached, before proceeding against the persons against whom a prima facie case was made out from the materials contained in the case papers sent by the learned Magistrate while committing the case to the Court of Session.

42. The reference to the effect as to whether the decision in *Ranjit Singh* case was correct or not in *Kishun Singh* Case, is answered by holding that the decision in *Kishun Singh* case was the correct decision and the learned Sessions Judge, acting as a court of original jurisdiction, could issue summons under Section 193 on the basis of the records transmitted to him as a result of the committal order passed by the learned Magistrate."

7. From bare reading of the mandates given in the aforesaid judgment, it is amply clear that even the Court of Session has jurisdiction after committal of case to it, to take cognizance of the offence of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. I have also gone through the different paragraphs of the case diary and found that there are ample evidence and grave suspicion of the involvement of the petitioners in the alleged offence. The court below while deciding the issue has rightly discussed the different paragraphs of the case diary in the order impugned and finding sufficiency of materials on the case record to proceed directed to issue summons to the petitioners.

8. In a case *Rajiv Thapar and others v. Madan Lal Kapoor*; (2013) 3 SCC 330, the Hon''ble Supreme Court while dealing with the issue of discharge in a complaint case, lodged at the instance of father of a deceased girl, held in paragraph- 28 as follows:-

"28. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused.

Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held."

9. It is true that the above finding was recorded on a petition filed by the accused persons under Section 227 of the Code but the principles decided by the Hon"ble Supreme Court is equally applicable in the present case. Since there is strong prima facie case, grave suspicion and sufficient materials on record, the court below has rightly directed to issue summons against the petitioners and this is not a stage to make a roving inquiry into the matter or to see whether the trial would end in conviction or acquittal rather the court has to presume a strong prima facie case or grave suspicion to proceed against the petitioners.

10. For the reasons aforesaid, I do not find any illegality or impropriety in the order impugned. Accordingly this revision application is, hereby, dismissed.