

(2009) 07 JH CK 0067
In the Jharkhand High Court
Case No : Criminal M.P. No. 882 of 2005

Jay Prakash Roy

APPELLANT

Vs

The State of Jharkhand and Dinesh Paswan

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 353, 420, 447, 467
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 4

Citation : (2009) 07 JH CK 0067

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : P.C. Roy, for the Appellant; S.K. Srivastava, Assistant Public Prosecutor for the State, Shailendra Kumar Singh, for the O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—In this application petitioner prayed for quashing the order dated 6.4.2005 passed by CJM, Giridih in Giridih (T) P.S. Case No. 130 of 2003 corresponding to T.R. No. 1398 of 2005 whereby and whereunder he took cognizance of the offence u/s 447, 505, 353 of the IPC and also u/s 3/4 of SC and ST (Prevention of Attrocities) Act against the petitioner and two other accused. The petitioner further prayed for quashing the entire criminal proceeding of the aforesaid Giridih (T) P.S. Case No. 130 of 2003 corresponding to T.R. No. 1398 of 2005.

2. It appears that O.P. No. 2 lodged a written report in Sadar Police Station, Giridih, alleging therein that the accused persons including the petitioner had come to his office on 13.6.2003 at 10 a.m. It is then alleged that they threatened, abused and torn government files and papers and asked the informart to register his tracker without payment of entry tax otherwise face consequences. It is further allegeg that the accused persons including the

petitioner had told that he is Dusadh, a schedule caste and he will be shown his status as the accused persons were keeping the schedule caste on their foot. It is further stated that at the time of occurrence other employees of the office and other public present in the office.

3. It appears that on the basis of aforesaid written report, Giridih(T) PS, Case No. 130 of 2003 dated 20.6.2003 was instituted and police took up investigation. It then appear that after completing the investigation charge sheet submitted against accused persons including the petitioner. On the basis of said charge sheet learned CJM, Giridih vide order dated 6.4.2005 took cognizance of the offence and transferred the case in the file of SDJM, Giridih for commitment etc.

4. It is submitted that the petitioner is innocent and he has been falsely implicated in this case. It is further submitted that co-accused Sambhu Rai has filed the complaint case against the informant and District Transport Officer in the court of CJM on 16.6.2003. It is submitted that since petitioner appeared in that case as an advocate therefore, tie has been falsely implicated in this case. It is submitted that no offence under The SC and ST (Prevention of Atrocities) Act hereinafter referred as Act of 1989) made out as the petitioner is not: knowing the caste of informant. It is further submitted that on the same day another FIR was lodged by the District Transport Officer which was registered as Giridih (T.) P.S. Case No. 129 of 2003 and in the said written report the District Transport Officer has not mentioned anything that the informant of this case has also been abused and/or threatened by the accused persons including this petitioner. It is further submitted that this petitioner filed criminal miscellaneous petition No. 929 of 2005 against the order taking cognizance in connection with Giridih(T) P.S. Case No. 129 of 2003 and the" same was allowed by a bench of this Court vide order dated 10.10.2007 and the proceeding against the petitioner has been quashed.

5. On the other hand, learned Counsel for the O.P. No. 2 submits that from perusal of written report, it is clear that the petitioner and other co-accused were knowing that the informant is Dusadh by caste and knowing that they said that informant will be shown his status, as the accused persons were keeping the persons belonging to schedule caste on their foot. It is submitted that offence u/s 3(x) of the Act of 1989 is made out. It is further submitted that only because a case has been filed, the same will not operate as a bar in lodging another case of the same date of occurrence. It is further submitted that only because the counter case has been lodged at the earlier point of time, therefore, it cannot be presumed that the tatter case is false. It is submitted that from the materials available on record, prima facie case is made out against the petitioner and other accused persons u/s 447, 504, 353 of the IPC and also u/s 3/4 of the Act of 1989. Hence, the learned CJM has rightly taken cognizance againsl the accused persons including the petitioner..

6. Having heard the submission, I have gone through the record of the case. It is true that apart from this case i.e. Sadar (T) P.S. Case No. 130 of 2003 another

case bearing Giridih Sadar (T) P.S. Case No. 129 of 2003 Jated 20.6.2003 has been lodged on the basis of written report of District Transport Officer, Giridih against the petitioner and two others. It further appears that in the Sadar (T) P.S. Case No. 129 of 2003, the police submitted charge sheet against the petitioner and other two accused persons u/s 420, 467, 471 and 34 of the IPC and on the basis of said charge sheet cognizance was taken by the CJM, Giridih vide his order dated 14.12.2004. It appears that the said cognizance order was challenged by the petitioner in Cr.M.P. No. 929 of 2005 which was allowed by a bench of this Court vide order dated 10.10.2007 on the ground that from the materials available on the record, no offence u/s 420, 467, 471/34 of the IPC is made out against the petitioner and therefore the criminal proceeding against the petitioner is set aside.

7. Now, coming to the instant case, from perusal of the written report, filed by the informant, Dinesh Paswan, it appears that there is allegation in the written report that this petitioner along with co accused, Sambhu Rai and Krishna Rai had destroyed the government files and papers in the office of District Transport Officer on 13.6.2003 at 10 a.m. and had threatened the informant who is Head clerk of that office, and asked him to register the vehicle (tracker) of Sambhu Rai without payment of entry tax. It is also alleged in the written report that the accused persons uttered

Tum Harjan Dusadh Ho, Tumahari Jati Ka Awakat Dikha Denge, Jante Ho, Hamlog Harjano Ko pairon Tale Samajhate Hain.

(You are Dusadh , a schedule caste, the status of your caste will be shown, do you know, we are keeping the schedule cast on our foot.)

It appears from the FIR that the said utterances made in front of so many persons. Thus, from the allegations made in the FIR, I find that the offence u/s 447, 504, 353 of the IPC and 3/4 of the Act of 1989 is made out

8. It is submitted by learned Counsel for the petitioner that present FIR was lodged as a counter blast of complaint case No. 684 of 2003 filed by co-accused Sambhu Rai in the Court of CJM in which this petitioner appeared as an advocate. It is submitted that this petitioner has been implicated in this case with malafide intention. In my view, only because the accused persons had filed a case against O.P. No. 2 and others for an occurrence which took place on the same day and time, is no ground for quashing the FIF. of counter case filed by O.P No. 2. The correctness of the allegations made in the case and counter case can be seen only after the completion of trial. At the threshold, it is not desirable to quash the proceeding that too when prima-facie offence is made out against the accused persons.

9. As noticed above, after thorough investigation, police submitted charge sheet against the petitioner and other co-accused and also from perusal of written report prima facie case is made out against accused persons, thus, in my view, it is not in the interest of justice to quash the criminal proceeding and cognizance

taking order without trial. During the trial prosecution as well as accused persons have right to bring all the materials in support of their case, then the court will be able to decide as to whose version is correct. I am further of the view that only because the counter case has been lodged at an earlier point of time, therefore it can not be presumed and/or infer that present case is false and concocted.

10. In the result, I find no merit in this application, the same is accordingly dismissed.