
(2005) 01 JH CK 0004

In the Jharkhand High Court

Case No : Criminal Misc Petition No. 127 of 2004

Kali Vishwakarma

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-01-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 482
Penal Code, 1860 (IPC) — Section 307, 34, 376, 448

Citation : (2005) CriLJ 4233 : (2005) 1 BLJR 206 : (2005) 1 JCR 420

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.; Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : A.K. Srivastava, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. In this Cr. Mis. Petition, the petitioner Kali Vishwakarma has prayed for quashing the order dated 5th December, 2003, passed in Sessions Trial No. 313 of 1996, arising out of Dhanbad P.S. Case No. 369 of 1996, registered under Sections 376/307/448/34 of the Indian Penal Code, whereby the learned Additional Sessions Judge-XIII, Dhanbad, has rejected the application, filed by the petitioner u/s 311 of the Code of Criminal Procedure for recalling the witnesses for further cross-examination.

2. The prosecution case, as per the First Information Report, in brief, is that the petitioner having trespassed the house of the prosecutrix asked her to flee away with him, to which she (the prosecutrix) refused. It is further alleged that the petitioner, on refusal by the prosecutrix, committed rape on her and again asked her to flee away along with him, to which she refused. Thereafter, the petitioner took out a match-box from his pocket and threw a burning match-stick on the prosecutrix, due to which her clothes started burning. On the alarm, raised by her, the petitioner and his companion, namely, Ramesh Yadav, fled away. Having

heard the hulla, the neighbourers came there and took her to hospital, where she gave her fardbeyan.

3. Annexure 2 is the purported joint compromise petition, filed on behalf of the prosecutrix and her father on one side and both the accused on the other side. In the said compromise petition it is stated that due to misunderstanding, the informant party had deposed before the Court. In the said petition it has also been stated that now good relations are prevailing between the parties and, as such, the informant party does not wish to pursue the case and are ready to depose afresh in the Court, if required.

3. Based on the said compromise, a petition was filed on behalf of the petitioner u/s 311 of the Code of Criminal Procedure on the same day, the compromise petition was filed i.e. 25th, November, 2003. The learned Court below while found that Sections 376 and 307 of the Indian Penal Code, are not compoundable, though Section 448 of the Indian Penal Code, is compoundable, also found that the aforesaid prosecution witnesses have already been cross-examined and nothing has been produced to invoke the power of the Court u/s 311 of the Code of Criminal Procedure. The learned Court below, accordingly, by the impugned order dated 5th December, 2003 held that Section 448 of the Indian Penal Code, being compoundable, the compromise petition can be accepted to that extent but it can not be accepted in any manner so far as compromise for the offences under Sections 376 and 307 of the Indian Penal Code are concerned, as they are not compoundable. Having rejected the said application, the learned Court below fixed 9th December, 2003 as the date for defence and argument.

4. Learned counsel for the petitioner before the learned Single Judge relied on two decisions of this Court in the cases of Tetri Devi v. Sukro Mahto 2002(3) JCR 15 (Jhr) and Vijay Ram v. State of Jharkhand, (Cr. Revision No. 189 of 2003, disposed of on 3.6.2003). Learned counsel for the petitioner submitted that in the case of Tetri Devi, (supra) the offence was u/s 376/34 of the Indian Penal Code, whereas in the case of Vijay Ram, (supra) the offences were under Sections 304B and 302/34 of the Indian Penal Code. He submitted that this Court, in similar circumstances, when a compromise petition was filed, allowed the petition, filed u/s 311 of the Code of Criminal Procedure for recalling the witnesses for further cross-examination, in the light of the said compromise petition.

5. This case was initially heard by the learned Single. Judge, who having not agreed with the findings of the learned Single Judge, rendered the cases of Tetri Devi, (supra) and Vijay Ram, (supra), referred the matter for hearing before a Division Bench.

6. The judgment, rendered in the cases of Tetri Devi, (supra) and Vijay Ram, (supra) was noticed by another Single Judge in the case of Ram Chandra Das and Ors. v. State of Jharkhand and Anr, [Cr Revision (DB) No. 519 of 2003]. In

the said case also the learned Single Judge having not agreed with the findings, rendered in the cases of Tetri Devi, (supra) and Vijay Ram, (supra), referred the matter to a Division Bench.

7. A Division Bench of this Court vide its judgment dated 5th August, 2004, delivered in the case of Ram Chandra Das and others, (supra), held both the aforesaid judgments, rendered in the cases of Tetri Devi (supra) and Vijay Ram, (supra) as a judgment in personem in between the parties, claiming the rights, and not a judgment in rem, no ratio having been laid down in those cases.

8. The Court has inherent power to recall a witness, if it is satisfied that the witness is prepared to give evidence, which is materially different from what he had given earlier. But in that case, there should be an affidavit of the witness, to be filed before the Court, that the statement, given by him earlier before the Court, was incorrect and now he wants to give correct statement. In this connection one may refer a decision of the Supreme Court in the case of Mohd. Husain Umar Kochra etc. Vs. K.S. Dalipsinghji and Another etc.,

9. In exceptional cases, it is open to a Court to summon or recall and re-examine any witness at any stage, if there exists justifiable reasons to do so, in the interest of justice, but the Court should act with circumspection and exercise power sparingly.

10. In matrimonial cases, to encourage the genuine settlement of dispute, sometime inherent power u/s 482 of the Code of Criminal Procedure is exercised. For example, in the case of B.S. Joshi and Others Vs. State of Haryana and Another, the Supreme Court interfered with a proceeding, which was initiated at the instance of the wife against her husband and in-laws for the offence u/s 498A of the Indian penal Code. In the said case, the wife and husband subsequently agreed for mutual divorce and filed a compromise petition to that extent.

11. The present case of the petitioner is a different one. None of the witnesses has stated that he had earlier given incorrect statement before the Court. Neither the compromise reached between the parties is in the interest of the society nor it is a case where it can be suggested that matrimonial dispute can be resolved if the proceeding is set aside on the basis of the compromise. In fact, by filing a petition for compromise and requesting the Court to recall and re-examine the prosecution witnesses by exercising power u/s 311 of the Code of Criminal Procedure, the defence wants to fill up the lacuna and to demolish the prosecution case by further cross-examining the witnesses on the points on which detailed cross-examination has already been made.

12. In the circumstances, if the trial Court has refused to exercise its power u/s 311 of the Code of Criminal Procedure, it requires no interference. There being no merit, this Cr. Misc. Petition is hereby dismissed.

Narendra Nath Tiwari, J.

13. I agree.