
(2008) 03 JH CK 0037
In the Jharkhand High Court

Khedan Hazam and Another

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2008) 3 JCR 344

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—This Criminal Revision has been preferred by the petitioners against the order dated 21.6.2007 passed by the Additional Sessions Judge, FTC No. IV Bokaro in S.T. No. 453 of 2006 whereby and whereunder the learned trial Court below dismissed their petition filed u/s 227 of the Code of Criminal Procedure and refused to discharge them.

2. The prosecution story in short was that on 6.6.2006 when the accused Guleshwar Thakur was digging foundation 6" inside the land of the informant which was earlier measured and a pillar was installed, the informant opposed, as a result of which he was assaulted by Guleshwar Thakur and his associates. It was alleged in the fardbeyan that Guleshwar Thakur attacked on the informant with shovel to which when he attempted to ward off such attack, he sustained injury on his left temporal. The accused Shukar Thakur assaulted with rod and other accused persons inflicted blow with sticks as a result of which he sustained injury on his legs and different parts of his body. He further sustained injuries, from the stones and bricks pelted by Matuk Thakur, Madhu Thakur, Madan Thakur, Charku Thakur, Andu Thakur and Kali Thakur. On alarm being raised by the informant his son and the witnesses arrived, witnessed the occurrence, pacified the matter and removed the informant to the police station in his state of unconsciousness. The specific allegation against the petitioners was that they

had inflicted blows with sticks on the legs of the informant, who had arrived at the place of occurrence later.

3. Mr. Laljee Sahay, the learned Counsel for the petitioners submitted that as matter of fact, there was free fight between two neighbours being the informant and Guleshwar Thakur and the petitioners had nothing to do with their quarrel. The police registered a case against the 12 accused persons including the petitioners for the alleged offence under Sections 147/148/149/323/324/325/307 of the Indian Penal Code and after investigation the police submitted charge-sheet against all the accused persons including the petitioners in the above sections without deviation.

4. Mr. Laljee Sahay, further submitted that the specific allegation against the petitioners was of attributing stick blows on the legs of the informant but without corresponding injuries. It was alleged that the informant was assaulted by four accused with sticks on his legs but without proportionate, quantitative injuries. Similarly, the informant implicated ten persons including the petitioners with their attribution in different manner but without any grievous injury in spite of the allegation that some of them had used heavy and blunt weapons like shovel. Axe etc. and had there been intention of the accused persons to eliminate him, there was no intervening circumstances to prevent them and therefore, offence as alleged did not constitute the offence under Sections 325/307, IPC against any of them. Besides, according to the prosecution case, the accused persons had appeared at the scene at different stages with different intention without concert of mind and therefore, the alleged offence could not be inferred to be given effect to in prosecution of common object so as to shackle criminal liability upon the petitioners also.

5. Finally, the learned Counsel submitted that the parties to controversy and dispute are descendants of common ancestor and entered into amicable settlement of the dispute with the intervention of the common friends and well wishers and filed compromise petition in the Court below. In view of the above fact, the learned Counsel submitted that the petitioners may be discharged by allowing the compromise petition.

6. The learned A.P.P. opposed the contention and submitted that neither the copy of the compromise petition nor injury report has been brought on record so as to find out the injury on the person of the informant for the appreciation of the submission of the petitioner in broad spectrum.

7. Waving regard to the facts and circumstances of the case. I observe that in catena of decisions this Court has held that whenever any petition is filed u/s 227 of the Code of Criminal Procedure, what the Court is required to do is to discuss the prima facie case against the accused persons based upon the materials on record and the injuries found on victim/victims according to need and to pass appropriate order in accordance with law. But I find from the order impugned dated 21.6.2007 that the learned Court below simply recorded that the informant

was examined at the Referral Hospital as well as at BGH (without disclosing abbreviation) and that Doctor found several injuries on different parts of his body including on his ear and cheek. Yet, the Court was silent about the nature of the injuries found" on the specific part of the body of the informant and dismissed the petition filed u/s 227 of the Code of Criminal Procedure with the observation that it was not the nature of the injury which was important, rather it was the intention which had to be seen at that stage. The learned Court below perhaps lost sight of the fact that had there been intention of 12 accused persons armed with unconventional and blunt weapons to eliminate the informant, there was no intervening circumstances to obstruct in their mission. With such observation the order impugned dated 21.6.2007 passed by the Additional Sessions Judge, FTC IV Bokaro in S.T. No. 453 of 2006 is set aside with the direction to pass appropriate order in accordance with law within a reasonable period. This Criminal Revision is allowed.