
(2006) 01 JH CK 0018

In the Jharkhand High Court

Case No : Criminal Revision No. 741 of 2005

Mahendra Saw alias Mahendra Kumar Sahu

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 18-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 203

Citation : (2006) CriLJ 1874 : (2006) 1 JLJR 427 : (2006) 1 EastCriC 374 :
(2006) 3 CurCriR 376 : (2006) 1 AIRJharR 598 :

Hon'ble Judges : N. Dhinakar, C.J

Bench : Single Bench

Advocate : T.R. Bajaj, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

N. Dhinakar C.J.

1. This revision is against the order of the Addl. Sessions Judge, FTC No. IV, Dhanbad, revising the order of the Judicial Magistrate 1st Class, in C. P. Case No. 1000/04, dismissing the complaint of the complainant, who is the Opp. Party No. 2 in this revision.

2. A complaint was filed by the complainant (Opp. Party No. 2) against the petitioner, Mahendra Sahu, with an Allegation that at about 1.30 P. M. on 23-1-04, the petitioner, after requesting the complainant to make a cup of tea, caught her and pushed her onto the bed and forcefully raped her. According to the complainant - Opp. Party No. 2 she narrated the incident and thereafter filed a complaint at the police station. She has further alleged that since the police did not take any action, she had to come by way of a private complaint to seek justice. The complaint was taken on file, complainant was examined and it was fixed for enquiry u/s 202 Cr. P. C. During the course of enquiry, two witnesses were examined on behalf of the complainant - Opp. Party No. 2 and thereafter,

the learned Magistrate went on to pass an order dismissing the complaint. The complainant - Opp. Party No. 2, aggrieved by the said order of dismissal u/s 203 Cr. P. C., filed a revision before the Sessions Judge and the learned Sessions Judge reversed the order of dismissal and restored the complaint on file and directed the Magistrate to proceed with the case according to law. The present revision by the accused in the complaint is against the said order of the learned Sessions Judge.

3. Learned Counsel appearing for the petitioner strenuously contends that the learned Sessions Judge erred in reversing the order of the Judicial Magistrate dismissing the complaint, since, according to the counsel, the learned Magistrate found during enquiry that no offence had been made out and the evidence of the witnesses produced by the complainant was found to be unbelievable.

4. I am unable to agree with the above contention of the learned Counsel appearing for the petitioner.

5. Learned Sessions Judge considered the law on the subject, while reversing the order of the Judicial Magistrate. I have perused the order of the Judicial Magistrate as well as the order of the Sessions Judge, reversing the said order of the Magistrate. A perusal of the order of the Judicial Magistrate shows that the Magistrate went beyond his jurisdiction in discussing the evidence at the enquiry stage by giving a finding that the evidence of the witnesses is found to be unbelievable and that the complainant could not have taken a job with the petitioner accused as he was a total stranger to her. Learned Sessions Judge in the revision rightly found that the Magistrate at the stage of enquiry could not go into the pros and cons of the evidence of the witnesses and that the settled principle of law is that the Court is only to find out at the stage of enquiry whether the materials, prima facie, make out an offence and if, prima facie, an offence is shown to have been made out on the Allegations, then the Magistrate is only expected to proceed with the enquiry and frame a charge and that at that stage, he cannot discuss the evidence and give a finding. The words, "sufficient grounds for proceeding" found in Section 203 Cr. P. C. clearly show that All that the Magistrate is expected to do is to see only whether there are sufficient grounds for proceeding against the accused for an offence and at that stage he cannot go into the truth or otherwise of the Allegations made in the complaint. The Magistrate should also keep in mind that the standard of proof required at the stage of enquiry is not the same, which is expected of the complainant during the trial. If there is prima facie, material to support the Allegation, which will show sufficient grounds for proceeding against the accused shown in the complaint, then the hands of the Magistrate is tied and he cannot but to proceed with the case and dispose it of according to law. The Sessions Judge rightly held that the Magistrate exceeded his jurisdiction by dismissing the complaint u/s 203 Cr. P. C. after discussing the evidence produced before him.

In my view, the order of the learned Sessions Judge requires no interference. This revision is, therefore, dismissed.