

(2006) 05 JH CK 0047
In the Jharkhand High Court
Case No : Cr.M.P. No. 1480 of 2005

Naresh Kumar Chawda

APPELLANT

Vs

The State of Jharkhand and Ehsanul Haque

RESPONDENT

Date of Decision : 09-05-2006

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 202, 203, 482

Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 324

Citation : (2006) 05 JH CK 0047

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Advocate : Shailesh, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioner Naresh Kumar Chawda has preferred the present application u/s 482 of the Code of Criminal Procedure for setting aside the order dated 18.6.2004 passed by the Sessions Judge, Dhanbad in Criminal Revision No. 94/2004 whereby and whereunder the order passed by the Judicial Magistrate, Dhanbad dismissing the complaint case No. 1578/03 u/s 203 Cr.P.C. was set aside with the observation (Annexure-6).

2. To recapitulate, the brief fact of the case is that the complainant O.P. No. 2 filed a complaint Case No. 1578/03 on 8.12.2003 before the C.J.M., Dhanbad stating inter alia that he was a tenant under the petitioners since the period of his father and he was running a business of Vulcanizing in the name and style Milan Vulcanizing Works. He has given the reference of the alleged occurrence, which took place in the night of 6/7.12.2003 that while he was sleeping in his said shop, he heard a knock at the door and on demand it was stated by the outsider that they had to get their tyre repaired. The complainant opened the door and found a number of accused persons variously armed with spear sticks

and pistols in their hands he was slapped "by the accused Suresh Kumar Chawda and on his instruction a person appeared to be police man in the uniform caught hold him, took out his pistol and put it in his mouth extending caution that in case of raising alarm he would be shot at. The other accused persons robbed all his belongings from his business premises and removed on a truck including the tyres. On hearing alarm when the brother of the complainant Md. Amanullah & Others who were sleeping behind the petrol pump came there and they were also assaulted by the petitioner and others by fists and slaps. In the meantime, the neighbours awoke and the complainant raised alarm. It is alleged that the person in the police uniform snatched Rs. 7,000/- as well as the papers relating to shop from the pocket of the complainant. On the command of the accused Suresh Kumar Chawda the other accused persons demolished the premises of the complainant and thereafter all the culprits escaped. The police was informed but without any result. Then he went to the residence of S.P. and thereafter to the S.D.O., Dhanbad. But no action was taken by them. It is further alleged that on 7.11.2003 he was forced by the accused No. 10 to write on a blank paper that he was taking away his goods and belongings after vacating the shop at this own sweet will and his signature was obtained forcibly thereon. He has given the list of the articles which were removed on a truck by the accused persons worth Rs. 1,00,000/- and in view of the alleged offence. The offence was suggested under Sections 323, 324, 341, 147, 148, 457, 395 I.P.C. and u/s 27 of the Arms Act in the complaint case. The present petition contains that Shri Abhimanu Kumar, Judicial Magistrate, Dhanbad after making an enquiry u/s 202 Cr.P.C. found the case to be of civil nature and that no prima facie case under penal offence was attracted, he dismissed the complaint case No. 1578/03 u/s 203 Code of Criminal Procedure.

3. A Criminal Revision No. 94/2004 was preferred by the O.P.No.2 herein against the said order of dismissal without figuring the accused persons as the Opposite Party in the said revision and the learned Sessions Judge without giving opportunity to the accused persons of being heard allowed the revision application by setting aside the order of the Judicial Magistrate dated 18.6.2004 in contravention of natural justice and directed to hold further enquiry into the matter and to pass fresh order in accordance with law.

4. On the receipt of the order passed in the Revision Application Shri Abhimanu Kumar, Judicial Magistrate, Dhanbad immediately on the same set of facts and without making any further enquiry took cognizance of the offence under Sections 147, 323, 341, 380 and 149 of the Indian Penal Code on 27.7.2004 against the accused and thereafter summons were issued.

5. Learned Counsel for the petitioner submitted that the impugned order dated 18.6.2004 passed in Criminal Revision No. 94/2004 is bad in law on the grounds that the accused persons were not made party and accordingly no notice was issued against them for audience before passing the impugned order whereby and whereunder the Sessions Judge, Dhanbad tried to circumscribe the powers

of the Judicial Magistrate conferred u/s 203 of Cr.P.C.

6. It is further contended that the Sessions Court failed to appreciate that the Magistrate is not a silent spectator at the time of recording of preliminary evidence before summoning the accused rather he ought to have carefully scrutinized the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations and in this manner the Judicial Magistrate committed grave error in law by taking cognizance vide order dated 22.7.2004 on the same set of facts and even without holding any further enquiry.

7. From the perusal of the order impugned passed by the Court of Shri Abhimanu Kumar, Judicial Magistrate 1st Class, Dhanbad dated 25.3.2004 whereby the order has been passed u/s 203 Code of Criminal Procedure dismissing the complaint it is evident that the learned court below mainly relied upon the pendency of Title Suit No. 140/03 as brought about by the plaintiff/O.P.No. 2 herein as also on the material that the complainant had vacated the shop according to his own sweet will and therefore it was a case of civil nature and the court observed that there was no prima facie case to proceed against the accused for the offence alleged in the complaint case and accordingly Complaint Case No. 1568/03 was dismissed.

8. From the order of the Sessions Judge passed in Criminal Revision No. 94/04 on 18.6.2004 which was preferred against the dismissal of the complaint, the learned Sessions Judge while disposing of the Criminal Revision observed that:

From the complaint petition it is clear that there was a dispute between the complainant and the accused in respect of a shop in which the complainant was running his tyre repairing shop. From the complaint petition it also appears that the complainant has instituted a suit against some of the accused persons who happen to be the landlord of the shop premises of the complainant. That aspect of the matter is entirely different from this case. The Court should not have given much importance to the aforesaid facts and circumstances of the case in passing the impugned order. The dispute of the shop between the complainant and some of the accused is entirely one thing and the alleged occurrence is entirely a different thing. The court below should have strictly confined itself to the statement of complainant recorded on S.A. and the statements of the witnesses of the complainant recorded in course of enquiry. The court below has utterly failed in appreciating the evidence of the complainant produced in course of the enquiry, and as such the impugned order is liable to be set aside.

9. On the other hand, the order impugned dated 27.7.2004 whereby cognizance of the offence was taken against the petitioner and other accused persons pursuant to the direction made by the Sessions Judge in Criminal Revision No.94/04, the said learned Judicial Magistrate while depicting the complainant's case has simply mentioned that the complainant produced 4 witnesses in course of enquiry in support of the complaint and from perusal of which a prima facie

case was made out against Suresh Kumar Chawda, Naresh Kumar Chawda, Pandit Jee, Sen Babu and Satendra Kumar for the offence under Sections 147,323,341,380 and 149 of the Indian Penal Code and directed the complainant to furnish the requisites so that summons be issued to the accused persons.

10. The revisional power of a criminal case is conferred upon the Sessions Judge as the supervisory jurisdiction in order to correct the miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution and such jurisdiction is required to be exercised with due care and caution.

11. From perusal of the order impugned passed by the Sessions Judge in Criminal Revision No.94/04 this Court does not find any illegality or irregularity therein to interfere with since the order is based upon the reasoning as contained in order dated 18.06.2004 (Annexure-6) hence it does not require interference.

12. But since the subsequent order passed by the Judicial Magistrate taking the cognizance of the offence on 27.7.2004 on the same set of facts calls for interference on the ground of non application of judicial mind and hence it is set aside with the direction to the learned Judicial Magistrate, Dhanbad to make a discreet enquiry into the materials on record and to pass a fresh speaking order upon application of judicial mind in accordance with law in complaint Case No. 1578/03.

13. This petition is allowed with the above observation.