
(2009) 09 JH CK 0010
In the Jharkhand High Court

Rabindra Kumar Singh

APPELLANT

Vs

The State of Jharkhand and Sidheshwar Mandal

RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:

Constitution of India, 1950 — Article 356
Criminal Procedure Code, 1973 (CrPC) — Section 102, 197, 202
Penal Code, 1860 (IPC) — Section 147, 148, 166, 21, 323

Citation : (2009) 09 JH CK 0010

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This is an application for quashing the order dated 19.06.2005 passed by Judicial Magistrate, 1st Class, Sahibganj, in P.C.R. Case No. 35 of 2003 where by and where under he come to the conclusion that prima facie offence under Sections 166 and 384 of the Indian Penal Code is made out. The petitioner further prayed for quashing the order dated 25.07.2005 passed by Additional Sessions Judge-I, Sahibganj, in Criminal Revision No. 40 of 2004 where by and where under he confirmed the aforesaid order passed by the Judicial Magistrate, 1st Class, Sahibganj.

2. It appears from complaint petition that on 20.02.2003 the complainant (opposite party No. 2), along with his labour (Kishore Mandal) was going to village chanan on his tractor bearing registration No. BED 780 and when he reached at Jirwabari O.P., he stopped it on the direction of petitioner. It is further alleged that even though all the papers, relating to tractor, have been shown to the petitioner, the tractor was seized by the petitioner. It is further alleged that when the complainant requested to release the tractor, petitioner did not give any heed to his request, nor did he give any seizure list. It is further alleged that thereafter on 21.02.2003 complainant filed a petition in the court of learned Chief Judicial Magistrate praying therein that the concerned police station may be

directed to send a report as to why the said tractor has been seized. It is further alleged that the petitioner illegally seized the tractor and forcibly took LTI of Kishore Mandal (labour of opposite party No. 2) on a blank paper. It is alleged that the said occurrence took place because the opposite party No. 2 filed a complaint case against the petitioner vide P.C.R. No. 28 of 2003 under Sections 323, 448, 147, 148, 380, 504 of the I.P.C.

3. It appears that after completion of inquiry the learned Judicial Magistrate, 1st Class, Sahibganj come to the conclusion that prima facie offences under Sections 166 and 384 of the I.P.C. are made out, therefore vide order dated 19.06.2004, he directed the office to issue process against the petitioner.

4. It further appears that against the aforesaid order of Judicial Magistrate, 1st Class, Sahibganj a criminal revision bearing Criminal Revision No. 40 of 2004, had been filed in the court of learned Sessions Judge, Sahibganj, which was dismissed vide order dated 25.07.2005.

5. It is submitted by Sri. Jay Prakash Jha, Sr. Advocate that petitioner is Sub-inspector of Police and he is a public servant within a meaning of Section 21 of the I.P.C. It is further submitted that the said tractor was seized by the petitioner in discharge of his official duty. It is submitted that the petitioner received an information that a stolen tractor will go through Jirwabari for disposal. It is submitted that in view of aforesaid information petitioner was conducting a regular checking in front of Jirwabari O.P. and in course of that checking tractor of complainant seized, because the driver of the tractor had no licence for driving the vehicle and he had also not produced any paper regarding the tractor. It is submitted that Section 197 of the Code of Criminal Procedure prohibits any court from taking cognizance of an offence against a public servant without the sanction of the State Government if the said offence committed in discharge of his official duty. It is submitted that in the instant case without obtaining the sanction of State Government, the cognizance of the offences has been taken. Thus, the same is illegal being violative of Section 197 of the Cr.P.C. It is further submitted that even the allegations made in complaint petition are taken to be true, no offence u/s 166 or 384 of the I.P.C. is made out. Thus, on this ground also the order of cognizance is bad.

6. On the other hand, learned Counsel appearing for the opposite party No. 2 submits that Section 197 of the Cr.P.C. will not apply in the present case, because petitioner is not removable by the order of State Government. It is submitted that as per the Police Manual, D.I.G. is competent to remove the petitioner from service. Under the said circumstance as per Section 197 of the Cr.P.C. no sanction is required for prosecuting the petitioner. It is further submitted that facts stated in the complaint petition as well as the statements of complainant on S.A. and statement of witness Kishore Mandal will show that petitioner abused Kishore Mandal and forcibly took his LTI on a blank paper. Thus, the offence of extortion as defined u/s 383 of the I.P.C. is made out. It is further submitted that admittedly no case has been filed against the

complainant, therefore, petitioner being a police officer disobeyed the law and seized the tractor of opposite party No. 2 with an intention to cause injury to him. Therefore, the offence u/s 166 of the I.P.C. is also made. Accordingly, it is submitted that there is no illegality in the impugned orders.

7. Having heard the submission, I have gone through the record of the case. Admittedly, petitioner is a Sub-inspector of Police. It is also admitted at bar that the petitioner's service governed by Jharkhand Police Manual. Rule 824 of the Jharkhand Police Manual prescribes different types of punishment, including dismissal and removal from service, which can be inflicted on a police officer of and below the rank of Inspector. Rule 825 (b) & (c) empowers Inspector General as well as Deputy Inspector General to pass an order of dismissal, removal upon a Sub-inspector of Police.

8. Section 197(1) of Code of Criminal Procedure runs as follows:

197. Prosecution of Judges and public servants. -

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

[Provided that where the alleged offence was committed by a person referred to in Clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, Clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

9. Thus, from the plain reading of Section 197 of the Cr.P.C., it appears that it draws a line between public servants. When a public servant can be removed by an authority without sanction of State Government then no sanction is necessary, however if a public servant is removable only with the sanction of State Government then in that case as per Section 197 of the Cr.P.C. sanction for prosecution is necessary.

10. It has been held by their lordships of Supreme Court in *Nagraj Vs. State of Mysore*, that if an Inspector or Sub-inspector of Police or constable being removable by the Inspector General or by Superintendent of Police, no sanction is necessary.

11. As noticed above, in the instant case as per the Jharkhand Police Manual, petitioner, being a Sub-inspector of Police can be dismissed or removed by the order of Inspector General or Deputy Inspector General. There is nothing in the Jharkhand Police Manual which requires prior approval or permission of the State Government for inflicting aforesaid departmental punishment upon a Sub-inspector of Police. In that circumstance, I conclude that for prosecuting petitioner, no sanction is necessary as per Section 197 of the Cr.P.C. Thus, the first contention raised by learned Counsel for the petitioner does not inspire any confidence. Hence, the same is rejected.

12. It appears from the impugned order dated 19.06.2004 (passed by learned Judicial Magistrate) that Kishore Mandal while disposing during inquiry u/s 202 of the Cr.P.C. had categorically stated that petitioner R.K. Singh abused him and forcibly took his LTI on blank paper.

13. Section 383 of the I.P.C. defines extortion. It says that if any person put another person in fear and induced him to deliver any property or valuable security or anything signed or sealed which may be converted into valuable security the said person commits an offence of extortion. In the instant case, there is direct allegation against the petitioner that he put Kishore Mandal in fear and forcibly took his LTI on blank paper. Therefore, the court below had rightly come to the conclusion that prima facie offence of extortion is made out against him.

14. Section 166 of the I.P.C. provides that if any public servant knowingly disobeys any direction of law and thereby caused injury to other person shall be liable to be punished for committing an offence u/s 166 of the I.P.C.

15. It is true that u/s 102 of Cr.P.C., police officer has power to seize any property which may be alleged or suspected to have been stolen or which may be found under the circumstances which create suspicion of the commission of any offence. But Sub-section 2 of Section 102 of the Cr.P.C. provides that if the said officer is subordinate to the officer in-charge of the Police station then he shall forthwith report the seizure to his officer in-charge. In the instant case, admittedly petitioner is officer in-charge of Jirwabari O.P. which falls within jurisdiction of Borio police station. There is nothing on record to show that the said seizure was reported by the petitioner to officer in-charge of Borio police station. Sub-section 3 of Section 102 further makes it imperative upon the police officer to report the seizure to the Magistrate forthwith but in the instant case no such report has been made. It further appears that no case instituted by the petitioner for the theft of tractor in question. It further appears that the said tractor was released in favour of O.P. No. 2 on the basis of direction given by District Transport Officer, Sahibganj, which shows that the said tractor has been seized without any rhyme and reason. It is alleged in the complaint petition that the complainant opposite party No. 2 had filed a case against the petitioner vide P.C.R. Case No. 28 of 2003 prior to the seizure of the said tractor. Thus, prima facie it appears that the said tractor has been seized by the petitioner against the

law with an intention to cause injury and/or loss to the opposite party No. 2. Accordingly, I conclude that the prima facie offence u/s 166 of the I.P.C. is made.

16. In view of the discussions made above, I find no illegality or irregularity in the orders of court below, which requires any interference by this Court. In the result this application fails and is accordingly dismissed.