

(2004) 12 JH CK 0003

In the Jharkhand High Court

Case No : Criminal M.P. No. 1097 of 2003

Radhey Shyam Mandal @ Bablu Mandal

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 23-12-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 193, 319, 482
Penal Code, 1860 (IPC) — Section 147, 148, 307, 323, 324

Citation : (2005) CriLJ 2832 : (2005) 4 RCR(Criminal) 438 : (2005) 1 JLJR 241 : (2005) 1 JCR 342 : (2005) 1 EastCriC 552 : (2005) 29 AllIndCas 695

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.

Bench : Single Bench

Advocate : Rajeeva Sharma, for the Appellant; A.K. Sahani, for the Respondent

Final Decision : Allowed

Judgement

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

1. This application u/s 482 of Cr PC has been preferred by the petitioner against the order dated 13th February, 2001 passed by the learned Chief

Judicial Magistrate, Dumka, whereby cognizance of offence under Sections 147: 148: 448: 341: 323: 324: 307 and 379 of the Indian Penal Code

has been taken against the accused persons including the petitioner.

2. It appears that on the basis of the fardbeyan of Smt. Sati Devi recorded on 16th October, 2000 at 9.30 p.m. at Dumka (T) Police Station,

Ramgarh P.S. Case No. 89/2000 corresponding to G.R. No. 984/2000 dated 18th October, 2000 was instituted under Sections 147: 148: 448:

341: 323: 324: 307 and 379 of the Indian Penal Code against several accused persons including the petitioner. In the said far dbeyan, the

informant alleged that on 16th October, 2000 at 1.30 p.m. she along with her

sister-in-laws (Gotni) Paro Devi; (Nanad) Sabni Mosmat and her daughter-in-law (Phool Kumari) were in the house! All of a sudden, her relatives (Gotiyas), the accused persons including the petitioner entered into her house and started abusing and assaulted with fists and slaps, lathi, danda and rod, as a result of which, her sister-in-laws, namely, Paro Devi, Sabri Mosmat and daughter-in-law, Phool Kumari came for her rescue, but they were also assaulted. Accused Satan Mandal ordered to kill them, whereupon Paro Devi was attempted to kill and Ghanshyam shot an arrow which injured Paro Devi on her left hand and she fell down. On raising alarm, the people of the locality gathered. While fleeing away, accused persons also took away some of the utensils and silver chain.

3. According to the petitioner, after investigation, charge- sheet was submitted and all the accused persons were forwarded for trial under the aforesaid sections excluding petitioner Radhey Shyam Mandal @ Bablu Mandal who was not sent up as per the charge-sheet. Thereafter, the learned Chief Judicial Magistrate, Dumka took cognizance by order dated 13th February, 2001 under Sections 147: 148: 448: 341: 323: 324, and 379 of the Indian Penal Code against the accused persons including the petitioner.

4. Counsel for the petitioner submitted that there was no material against the petitioner and thereby, there was no occasion to take cognizance against him nor the C. J.M had jurisdiction to take cognizance, he having not sent up for trial. It was also submitted that the petitioner, a military personnel in the Border Security Force was posted at Jalpaiguri at the relevant date of alleged occurrence and he has been falsely implicated in the case.

5. It is a settled law that if an accused is not sent up by the police for trial on the ground that no case is made out against him only Sessions Court can summon the person left by the I.O. in the charge-sheet, if the Sessions Court finds that prima facie case is made out against such person as enunciated u/s 193, Cr PC. The trial Court can also take step u/s 319, Cr PC to summons such persons if there is evidence collected during trial.

6. In the present case, admittedly, the petitioner was not sent up for trial as I.O. found no case made out against him. In such circumstances, it was incumbent upon the Magistrate before taking cognizance for the offence alleged

against him to notice him and also give him opportunity to be

heard. But it has not been complied in the present case, as alleged by the petitioner and in that view of the matter the Court below having

committed error in taking cognizance, the impugned order dated 13th February, 2001 passed by the Chief Judicial Magistrate, Dumka cannot be

sustainable. The said order so far as it relates to petitioner is, accordingly, quashed.

7. However, it is made clear that if an accused is not sent up by the Police for trial, such person does not amount to discharge, in the eye of law,

but can be summoned to face trial if his involvement/indulgence is found during trial by the Court as laid down u/s 319, Cr PC.

8. This application is, accordingly, allowed.