
(2012) 06 JH CK 0011

In the Jharkhand High Court

Case No : Criminal Revision No. 324 of 2002

Radhey Shyam Tiwary

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 14-06-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 363, 366A, 376, 384, 500

Citation : (2012) 4 JCR 368

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Zaid Ahmad, for the Appellant; Rajesh Kumar for the Opp. party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

H.C. Mishra, J.—Heard learned counsel for the petitioner and learned counsel for the opposite parties. The petitioner has challenged the order dated 28.5.2002 passed by Shri Ranjeet Kumar, learned Judicial Magistrate 1st Class, Gumla, in Case No. C-3/97, whereby the application filed by the petitioner accused for discharge was rejected by the Court below."

2. It appears that a complaint case was filed against the petitioner by opposite party No. 2, Janki Prasad Sahu wherein it was alleged against the petitioner, who is a police officer, to have demanded Rs. 2000/- per month from the complainant as he was running an Ambulance and was also keeping patients in his house for treatment. The said complaint case was filed before the Court of Chief Judicial Magistrate and was registered as Case No. C-3/1997. It appears that the statement of the complainant was recorded on solemn affirmation and the witnesses were also examined in the enquiry stage, who have supported the case of the complainant and accordingly, prima facie case was found against the accused-petitioner for the offence under Sections 384 and 500 of the Indian Penal Code and process was directed to be issued against him. It appears that

subsequently the petitioner filed an application for discharge, which was rejected by the Court below by the impugned order.

3. Learned counsel for the petitioner has submitted that the impugned order passed by the Court below is absolutely illegal, inasmuch, the Court below has failed to take into consideration the fact that on the alleged date of occurrence, the petitioner being the police officer had gone to perform duty in connection with another case on the direction of the Superintendent of Police, Gumla. It has also been submitted that the petitioner has been falsely implicated in this case in order to wreck vengeance against him, inasmuch one Basia Rs. Case No. 65 of 1996 was instituted against the nephew of the complainant for the offence under Sections 363, 366-A and 376 of the Indian Penal Code, in which, subsequently, the name of the complainant had also transpired in the statement of the victim recorded u/s 164, Cr.P.C. However, the fact remains that the statement of the victim was recorded on 7.1.1997 whereas the complaint case was filed on 3.1.1997 i.e. prior to the recording of the statement of the victim.

4. Learned counsel for the petitioner, however, submitted that in view of the fact that the complainant was also involved in the case, he has mala fide filed this complaint case against the petitioner with false allegations and it was a fit case, in which, the petitioner ought to have been discharged.

5. Learned counsel for the complainant opposite party No. 2, on the other hand, has submitted that in the said Basia P.S. Case No. 65 of 1996. initially the complainant was not made an accused. It is submitted that the complaint petition was rightly filed against the petitioner in view of the fact that money was being demanded from the complainant and the statement of the complainant was recorded on solemn affirmation, in which, the complainant has supported his case. The witnesses examined in the enquiry stage also supported the complainant's case and accordingly, prima facie case was found against the petitioner. Learned counsel submitted that in view of the fact that the complainant was not made an accused initially in the said Basia P.S. Case No. 65 of 1996, there was no occasion for the complainant to have any grudge against the petitioner and as such, the submission of the learned counsel for the petitioner, has no legs to stand. Learned counsel accordingly, submitted that in view of the fact that offence is clearly made out against the petitioner on the basis of the allegations made in the complaint petition and the statements of the complainant recorded on solemn affirmation and of the witnesses examined at the enquiry stage, the Court below has rightly rejected the application for discharge filed by the petitioner and there is no illegality in the said order worth interference in the revisional jurisdiction.

6. After having heard learned counsels for both sides and upon going through the record, I find that on the basis of the allegations made in the complaint petition and the statements of the complainant on solemn affirmation and the witnesses examined on behalf of the complainant in the enquiry stage, the offence is clearly made out against the petitioner. The defence of the petitioner that he was

sent by the Superintendent of Police, Gumla in connection with another on the alleged date of occurrence, cannot be looked into at this stage. Similarly, I do not find force in the submission of the learned counsel for the petitioner that the complaint case has been filed against the petitioner for wrecking vengeance against him, inasmuch, in the said Basia P.S. Case No. 65 of 1996, the complainant was not made an accused initially and his name had transpired in the statement of the victim recorded u/s 164, Cr.P.C., which was recorded after the filing of the complaint case against the petitioner. In view of the aforementioned discussions, I do not find any illegality and/or irregularity in the impugned order passed by the Court below, worth interference in the revisional jurisdiction. There is no merit in this revision application, which is, accordingly, dismissed. Let this order be communicated to the Court below forthwith.