
(2014) 11 RAJ CK 0135

In the Rajasthan High Court

Case No : Criminal Contempt Petition No. 4/2004

Rajasthan High Court Bench

APPELLANT

Vs

Seema Sharma

RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 327

Penal Code, 1860 (IPC) — Section 120B, 218, 376, 376A, 376B

Citation : (2014) 11 RAJ CK 0135

Hon'ble Judges : Sunil Ambwani, Acting C.J.; J.K. Ranka, J

Bench : Division Bench

Advocate : Gaurav Tanwar, Amicus Curiae, Advocate for the Appellant

Judgement

1. Heard Mr. Gaurav Tanwar, appointed as an Amicus Curiae in the matter.
2. The proceedings in this D.B. Criminal Contempt Petition were initiated on a complaint made by the Additional District & Sessions Judge No. 2, Alwar against Smt. Seema Sharma for having published a scandalized news item that her statement given in sessions trial was changed by the Additional District & Sessions Judge No. 2, Alwar. Notices were issued for appearance of Smt. Seema Sharma. Despite issuing processes and thereafter issuing arrest warrants, her presence could not be secured. The Deputy Superintendent of Police, SC/ST Cell, Alwar sent a letter dated 22.08.2014 to the Deputy Registrar(Judicial), Rajasthan High Court that several attempts were made but the arrest warrants could not be executed. A request was made by his Office to issue a general arrest warrant to secure her presence. It is reported that she was arrested on 21.08.2014 in Case No. 392/2014 under Sections 384 and 388 IPC by the police of Police Station, Aravali Vihar, Alwar, and in which, investigation is in progress.
3. In order to find out as to whether there was any comment made or any steps taken with regard to her allegation of changing her statement, we summoned the record of sessions trial No. 34/1/03-State v. Kashinath Mishra & Ors.

4. From the judgment of the Additional Sessions Judge No. 2, Alwar(Rajasthan), dated 03.02.2005, in Sessions Case 34/1/03-State of Rajasthan v. Kashinath Mishra & Ors., under appeal in High Court, we find that Smt. Seema Sharma is a widow with two children. She lodged an FIR on 28.09.2002, against Shri Kashinath Mishra, Advocate, alleging that he had called her and made her sit in his office. After about 1-1/2 hours, Dr. Saxena came to the Office of the Advocate, and after asking her to sit there for a long time, both of them pressurised and threatened her. They got certain papers forcibly signed from her, and thereafter introduced her to Shri Naresh Agarwal. All the three persons raped her, and thereafter, introduced her to Shri Hari Singh, who was the SHO of the Police Station. Shri Kashinath Mishra, Advocate again called her in his office, where Hari Singh was sitting, and after giving her an assurance that they will get her some employment, they exploited her and got an agreement written from Shri Naresh Agarwal, on paying a sum of Rs.20,000/- to her, out of which Rs.5,000/- were taken by Shri Hari Singh. The Advocate again called her and introduced her to one Shri Ashok Gupta, Contractor, who took her to his farm house, where she was raped.

5. The sessions trial concluded with conviction of Shri Kashinath Mishra under Sections 376, 420 and 120B IPC and Shri Hari Singh under Section 376, 420, 120B, 384 and 218 IPC, with seven years imprisonment to both the accused under Section 376 IPC, and further two years imprisonment under Section 420 and 120B IPC. Shri Hari Singh was sentenced to two years imprisonment under Section 384 and 218 IPC. By the same judgment, other accused, namely Shri Ashok Kumar Gupta and Shri Naresh @ Narsi were also found guilty of offences under Sections 376 and 120B IPC, for which they were convicted and punished with seven years and two years imprisonment respectively. Dr. Gopal Babu Saxena had absconded, and thus, trial was not concluded against him.

6. In the judgment recording conviction and sentence, it is stated at page-19 that the evidence of the complainant was recorded on 23.02.2004, and thereafter, after five months, on 01.07.2004, in the later part of her statement, she had given twist to the facts of the case, and tried to rope Dr. B.R. Gwala, Superintendent of Police, and Dr. Jaswant Yadav, local Member of Parliament. She thereafter appeared for evidence on 05.01.2005. On that day, her evidence was closed. The Additional District & Sessions Judge had observed that delay in coming to the Court for giving her evidence, and contesting about 10 cases in different Courts, gives an indication that she is not alone and is backed by some person, however, it was not necessary for the Court to go into such facts. The Court was only required to find out whether she was exploited, raped and harassed. The complainant had made a police report against the powerful people of the society. She was cross examined by four Advocates from 05.01.2005 to 12.01.2005. Her statement and cross examination was recorded in about 25 pages. They have not been able to dislodge her from the facts stated, nor they could prove that she was not raped by the accused.

7. Ordinarily, a person is not permitted to record his evidence in the Court, or statement in the Court, unless permission is taken, and especially in rape cases, in which trial is proceeding for an offence under Section 376 IPC, or Section 376A, 376B and 376C IPC, under sub-section (2) and (3) of Section 327 Cr.P.C. Sub-section (2) of Section 327 Cr.P.C., provides that trial in such cases shall be conducted in camera, provided that the Presiding Judge may, on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court. Sub-section (3) of Section 327 Cr.P.C., provides that where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court.

8. There is nothing on the record of the sessions trial to indicate that the proceedings were directed to be held in camera, nor any permission to print or publish any matter in such proceedings, was required.

9. In the present case from the findings recorded in the sessions trial, we find that Smt. Seema Sharma, was a victim of sexual exploitation, in which, she being a widow, was firstly called by Shri Kashinath Mishra, Advocate, and thereafter, she was raped by various persons on different dates, who stood trial, and have been convicted. A petition for transfer of the case i.e. Transfer Petition (Crl.) No. 149/2003, was also made by Smt. Seema Sharma, in which initially, there was an interim order, but later on, the transfer petition was dismissed by the Supreme Court on 06.02.2004.

10. The allegation in the present case, made by the Additional District & Sessions Judge No. 2, Alwar, against Smt. Seema Sharma, relate to her appearance before the Press, and to make statement that her deposition in the Court against Shri B.R. Gwala, Superintendent of Police, was changed by the Additional Sessions Judge. She stated that she had given statement that when she went inside the house of Shri Gwala, the lights suddenly put on, but her statement was changed that the lights suddenly went off. She alleged that the statement was changed to give benefit to Shri Gwala, Superintendent of Police with an object to establish that in the darkness, she could not have recognized as to who

11. Be that as it may, we do not find that trial in the present case was directed to be held in camera, and that the allegation, if any, of printing the matter, could only be made against the newspaper, and not against the victim of the crime, who had faced sexual harassment by influential persons of the society, including an Advocate, a police officer and a businessman, who have been convicted, for having raped her, under Section 376 IPC.

12. It is now reported, after about ten years, by the Police Station Aravali Vihar, Alwar, that Smt. Seema Sharma was arrested in Case No. 392/2014 under Sections 384 and 388 IPC, and is lodged in jail.

13. In the facts and circumstances, in which a widow was trying to save herself from the influential persons of the society, and that on her report, the accused

were convicted for having raped her, we do not propose to secure her presence for recording her statement, to explain the circumstances, in which she had appeared before the Press and made a statement that the Presiding Judge had changed her deposition in the Court, after a long and arduous trial, in which an observation has been made by the Additional Sessions Judge, that in the vigorous cross-examination by the Advocates, she could not be dislodged. Her statement to the Press that she had an apprehension of Court having changed her statement, does not appear to be a motivated stand, which may have scandalized the administration of justice.

14. In the special facts of the case, in which Smt. Seema Sharma had undergone sexual harassment and stood long and arduous trial, we do not propose to proceed further in this contempt petition.

15. The proceedings of the contempt petition are closed. An intimation to this effect shall be sent by the Registry to Smt. Seema Sharma, through the Superintendent of Police, Alwar.