
(2008) 03 PAT CK 0058
In the Patna High Court

Ram Dayal Yadav and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 12-03-2008

Acts Referred:

Citation : (2008) 03 PAT CK 0058

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—The petitioners who have been made to figure as accused in Complaint Case No. 561(C) of 2006 have prayed for the quashing of the entire criminal proceeding arising therefrom including the order dated 22.8.2006 passed therein by the learned Chief Judicial Magistrate, Supaul, whereby he, on perusal of the complaint, the statement on S.A. of the complainant, medical report and evidence of witness No. 1, forwarded the complaint to the Chhatarpur P.S. for investigation on the ground that prima facie the case was of serious nature.

2. The complainant, one Sumitra Devi, aged about 32 years, impleaded herein as O.P. No. 2, filed the aforesaid complaint on 22.8.2006 inter alia alleging the commission of offences under Sections 323, 379, 427, 376, 120B I.P.C. at the hands of the accused persons at about 6.30 P.M. on 20.8.2006. It is said that on receiving information from one Bindu Sharma that the accused were grazing their cattle upon her lands she hastened to the fields in question and found accused Ram Bilas Yadav, Santosh Yadav and Phulo Yadav present there with their cattle and that about 2 kathas of paddy seedlings had been destroyed by the cattle. When she raised protest, accused Ram Dayal Yadav standing nearby gave out that although he had told her to give up her lands to him and she had not done so, he would not permit any crops to be grown on the same. It is alleged that when she started driving away the cattle, Ram Dayal gave orders to catch hold of her, drag her to the patua fields and rape her so that she would be ostracized in the village. It is further alleged that following the orders accused Satish Yadav and Ram Bilas Yadav catching hold of the complainant dragged her

to the patua fields and divesting/her of her clothes the accused persons took turns to rape her and in course thereof accused Tapeswar Yadav took away her silver necklace worth Rs. 1500/-. It is also alleged that while departing the accused persons again threatened her that if she did not handover her lands to them then she would not be permitted to live in peace. It is said that as the weeping complainant was returning to her home enroute she met Dev Narayan Mandal and Pramod Sharma to whom she narrated the incident and on the following day a panchavati was arranged by the villagers which the accused persons refused to attend. Hence the complaint.

3. It appears that the learned Chief Judicial Magistrate on receipt of the complaint directed the Civil Surgeon, Supaul, to conduct a medical examination of the complainant and the report thereof was received. It further appears that the complainant and one witness Deo Narayan Yadav were examined in court on 25.11.2006 and 17.1.2007 respectively. It further appears that on 23.4.2007 a petition was filed in court by the complainant to the effect that her witnesses named in the complaint were unwilling to depose due to the threats extended by the accused persons whereupon the learned Chief Judicial Magistrate, as stated above, forwarded the complaint to the police station concerned.

4. It has been submitted by the learned Counsel for the petitioners that from a bare perusal of the complaint petition, the statement of the complainant on S.A. and evidence of witness No. 1, it would be evident that there is dispute between the parties over selling of landed property and it was as, a result of this enmity that the petitioners were sought to be implicated in a concocted case. It was also sought to be submitted that even otherwise the story propounded by the complainant appears to be unbelievable since petitioner Nos. 1 to 3 are full brothers and petitioner Nos. 4 and 5 were the sons of petitioner No. 1 and they could not have committed rape of the complainant in the presence of each other. The learned Counsel also submitted that the order dated 23.4.2007 displayed a complete non application of mind by the learned Magistrate since once having started an enquiry he could not have ordered for a fresh inquiry by the police and the same amounts to a denial of prompt justice. The learned Counsel has also raised a grievance of the husband, gotni, mother-in-law and other family members of the complainant not figuring as witnesses.

5. I am unable to agree with the learned Counsel for the petitioners regarding the jurisdiction of the learned Magistrate to send the complaint to the concerned police station in view of the decision of the Apex Court in Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, where it was observed in paragraphs 16 and 17 as follows:

16. The position under the Code of 1898 with regard to the powers of a Magistrate having jurisdiction to send a complaint disclosing a cognizable offence- whether or not triable exclusively by the Court of Session- to the Police for investigation u/s 156(3), remains unchanged under the Code of 1973, The distinction between a police investigation ordered u/s 156(3) and the one

directed u/s 202, has also been maintained under the new Code; but a rider has been clamped by the 1st Proviso to Section 202(1) that if it appears to the Magistrate that an offence triable exclusively by the Court of Session has been committed, he shall not make any direction for investigation.

17. Section 156(3) occurs in Chapter XII, under the caption: "Information to the Police and their powers to investigate"; while Section 202 is in Chapter XV which bears the heading "Of complaints to Magistrate". The power to order police investigation u/s 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate indistinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power u/s 156(3) can be invoked by the Magistrate before he takes cognizance of the offence u/s 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under Sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation u/s 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence u/s 156 and ends with a report or chargesheet u/s 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered u/s 202 to direct, within the limits circumscribed by that section, as investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding." Thus the object of an investigation u/s 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him.

6. In the instant case the learned Magistrate had brought into motion the machinery of Chapter XV. He had examined the complainant and one more witness u/s 200 Cr.P.C. which is the first step in the procedure prescribed under that Chapter. Therefore the question of taking the next step of the procedure envisaged u/s 202 Cr.P.C. had arisen. That being the position Section 202(1) is attracted and no fault can be found with the order of the learned Magistrate.

7. So far as non examination of the relatives of the complainant is concerned that is a complete non issue as they would be considered to be hearsay witnesses. In the result, I find no merit in this application which is dismissed.