

(2011) 04 JH CK 0038

In the Jharkhand High Court

Case No : Criminal M.P. No. 1037 of 2008

Ram Naresh Singh and Others

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 04-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2011) 04 JH CK 0038

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The Petitioners have invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashment of the order dated 7.2.2001 passed by the Addl. Chief Judicial Magistrate, Latehar in Balumath P.S. Case No. 5 of 2000 corresponding to G.R. No. 79 of 2000 by which cognizance of the offence was taken u/s 307 of the Indian Penal Code besides under Sections 147/148/149/323 of the Indian Penal Code. After commitment now the case is pending in the court of Addl. Sessions Judge (FTC) Latehar giving rise to S.T. No. 103 of 2008.

2. The prosecution story in short was that on 22.3.2000 when the informant and other witnesses were singing songs on the eve of "Holi" festival they were restrained by the accused persons who came there, variously armed with sticks and clubs and forbade them from singing songs and in the same transaction ,they started assaulting them, as a result of which informant and others sustained injuries on the heads and other parts of body. FIR was instituted against as many as 17 named accused persons for the alleged offence under Sections 147/149/323/307 of the Indian Penal Code on the basis of the fardbeyan of the informant.

3. Mr. Jitendra. S. Singh, the learned Counsel submitted that the occurrence did

not take place in the manner presented by the prosecution. As a matter of fact, there was group clash on the eve of the "Holi" as the accused persons restrained and asked the informant's party to stop singing vulgar songs what they were singing at the relevant time which resulted into altercation in which one person of the accused side succumbed injuries while being taken to RIMS.

4. Mr. Singh assailed the impugned order by which the cognizance of the offence was taken u/s 307 IPC and that the Investigating Officer after investigating of the case submitted charge sheet only under Sections 147/148/323 of the Indian Penal Code but the learned ACJM without explaining and exercising his judicial mind took cognizance of the offence u/s 307 of the Indian Penal Code without explaining the cause of such difference of opinion and as to what were the materials so as to take cognizance of the offence as also u/s 307 of the Indian Penal Code. The ACJM was required to assign the reason for deviation from the charge sheet and on this ground alone the impugned order dated 7.2.2001 was liable to be set aside.

5. Mr. Jai Prakash the learned Sr. Counsel appearing on behalf of the O.P. No. 2 did not dispute the proposition of law.

6. Having regard to the facts and circumstances, I find substance in the arguments. In the circumstances the order dated 7.2.2001 recorded by the Addl. Chief Judicial Magistrate is modified to the extent that no prima facie offence has been found u/s 307 IPC to take cognizance, as such this section is deleted from the impugned cognizance order.

7. With this observation this Cr.M.P. is allowed.