
(2010) 08 PAT CK 0018
In the Patna High Court

Ramdeo Verma and Others

APPELLANT

Vs

The State of Bihar and Smt. Janki Devi

RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:

Citation : (2010) 08 PAT CK 0018

Judgement

Akhilesh Chandra, J.—Heard learned Counsel for the petitioners and learned Additional Public Prosecutor for the State.

2. This is an application u/s 482 of the Criminal Procedure Code seeking quashing of the order dated 12.06.2004 and its proceeding passed in complaint case No. 927 of 2003 by Sri V.D. Rai, Judicial Magistrate, 1st Class, Rosera, taking cognizance for the offences u/s 342, 386/34 of the Indian Penal Code rejecting the materials produced by the petitioners with observations that defence has no locus standi at this stage.

3. The relevant facts in short as appears from Annexure - 1, the complaint petition bearing No. 927 of 2003 filed on 12.11.2003 is that the complainant Janki Devi was married with Surendra Paswan about 15 to 16 years ago. Her husband remarried with other lady driving the complainant away from the house, for which she filed a case in the Court. The case was not survived due to lack of proper pairvi. The complainant had two daughters from before by her husband Surendra Paswan and both daughters were kept by him.

4. At the time of being driven away she was pregnant, started to live in a hut by the side of road in village Patelia and further used to start daily wages for her livelihood, and gave birth of her third child after desertion. During such period accused Ram Sagar Mahto, Ram Narain Mahto committed rape forcibly at night without her consent and threatening were also given by the accused persons. In the meanwhile complainant again conceived. There upon both the accused started putting pressure upon her for abortion and on refusal, accused persons i.e. the petitioners took her away from her hut on the point of gun, and kept confined in the house of Ram Kailash Mahto, she was further brought to the

house of Ram Sagar Mahto where she gave birth of a baby, who is of Ram Sagar Mahto/Ram Narain Mahto. The accused persons got her signature on plain papers obtained and threatened to send her jail. On 04.11.2003 she with her both baby fled away from the house of Ram Sagar Mahto. Then she could learnt that the accused persons misused her signatures on plain paper and lodged a case against Rishikesh Singh and his son while she had no concern with them.

5. On receipt of complaint petition filed by opposite party No. 1 Janki Devi, for the offences under Sections 376, 365, 342, 386 of the Indian Penal Code besides Section 3(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. It was transferred to the court of Sri I.D. Singh, Judicial Magistrate, 1st Class, Rosera, for inquiry where S.A. of the complainant was recorded besides recording statements of four witnesses during inquiry. The court concerned finding prima facie case for the offences u/s 342, 386/34 of the Indian Penal Code took cognizance and refused to consider the documents filed by the named accused persons i.e. the petitioners giving rise to this case.

6. Learned Counsel for the petitioners submitted that no case is made out against the petitioners and the complainant opposite party had already filed almost similar case (Bibhutipur P.S. Case No. 119/2002 Annexure-2) against one Rishikesh Singh and Sanjiv Singh who stand convicted, and by filing supplementary affidavit relevant documents including deposition of the complainant recorded on 30.01.2006 are produced, basing whereon order of conviction has been passed in S. Tr. No. 145/2002 against the accused persons therein.

7. Learned Counsel further tried to led emphasis that had the complaint petition filed against Rishikesh Singh etc. being taken into consideration falsehood of the instant case could have come into light but it was unfortunate on the part of the court below that the documents produced by the petitioners at initial stage of the inquiry could not be considered. Attention of this Court was drawn towards Section 303 and some changes taken in Section 202 of the Criminal Procedure Code.

8. Learned Counsel for the opposite party No. 2 complainant though supported the impugned order and proceeding but expressed his inability to say anything as regard to supplementary affidavit etc. Learned Additional Public Prosecutor also while supporting the impugned order submitted that being, accused persons the petitioners had no locus standi to file any document at the inquiry stage so rightly the documents produced by them have not been considered nor they deserve any consideration by this Court.

9. The submissions made above on behalf of the petitioners on the point of right of accused persons during inquiry etc. have already recently been considered by this Court in another case, Anil D. Ambani and Ors. v. The State of Bihar and Anr. vide order passed in Cr. Misc. No. 24154 of 2004; and the points raised here are squarely covered there under wherein it has been held that the submissions are

not acceptable in view of the decision of the Apex Court in a case of State of Orissa Vs. Debendra Nath Padhi, wherein in paragraph 8 it has been held that "No provision in the code grants to the accused any right to file any material or document at the stage of framing of charge that right is granted only at the stage of the trial." Further, elaborating in para 18 of the judgment, it has been held "expression hearing "hearing the submission of accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing the charge hearing submission of the accused has to be confined to the materials produced by the police."

10. The Apex Court in the above case has not accepted its earlier view taken in a case of Satish Mehra Vs. Delhi Administration and Another, and further in para 23 it is held that "clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. In Satish Mehra case (Supra) holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.

11. The view taken by the Lordships in the Debendra Nath Padhi Case (Supra) shuts the door for the accused persons to produce any document before the Trial court at the time of taking cognizance or at the time of framing of the charge either at the stage of 239, 245 or 227 of the Code of Criminal procedure, but some questions emerged in my mind and I fail to restrain myself in stating that, prior to amendment in the Code of Criminal Procedure in the year 1973, Section 202(1) of old act 1898 was as follows:

202. (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance, or which has been transferred to him u/s 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint:

12. From the above, it appears that status of the person against whom any complaint was filed was not as of accused rather they were treated as persons complained of. But after amendment taking place in the year 1973, some changes took place in the above Section 202(1) of the Criminal Procedure Code and here the word 'accused' takes place of the word 'persons complained of' of which reads as such:

202. Postponement of issue of process - (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him u/s 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an

investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding.

13. In the year 2006, the Code of Criminal Procedure has again been amended and specially in Section 202(1) the words "and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" has also been inserted and now present Section 202(1) reads as such:

202. Postponment of issue of process -(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him u/s 192, may, if he thinks fit, [and shall, in case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

14. It is settled principle/practice of law till now, that at the stage of inquiry after filing of the complaint the persons against whom inquiry is going on though has right to watch the proceeding but nothing more. And if such accused against whom complaint is filed has to do nothing, but to watch the proceeding only what was intention of the legislature to arm such person with a right to be defended by pleader of his choice as provided u/s 303 of the Criminal Procedure Code which reads as such:

303. Right of person against whom proceedings are instituted to be defended - Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.

15. To my mind, intention of the legislature directly or indirectly behind providing such right of being defended to the accused and using the word "accused" in section 202(1) of the Criminal Procedure Code is that even at such stage the accused against whom complaint has been filed if can stand and successfully defend himself, may do so, and such act of defending himself may be done by engaging competent lawyer of his choice and by producing some documents of unimpeachable character. If there is nothing left to be done except watching the proceeding what purpose would be served by deployment of any legal expert to defend.

16. No doubt, intention of the legislature may not be to provide status of inquiry for hearing on the point of charge, status of mini trial but at the same time if the criminal proceeding may be dropped on production of some documents of unimpeachable character cutting very root of prosecution on the point of law or jurisdiction of the court without depending upon or requiring any oral evidence or providing any room to cause delay, it may be done. Such situation may be compared with the provision as contemplated under Order XIV Rule 2 of the CPC

which reads as such:

2. Court to pronounce judgment on all issues - (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to -

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

17. The above provision provides the civil courts to pronounce judgment on all the issues but at the same time Sub-rule (2) arms the court with special jurisdiction to decide the case on preliminary issue if it involves issue of law only relating to jurisdiction of the court or a part of the suit created by any law for the time being in force.

18. If on consideration of the provisions referred to above, documents of unimpeachable character cutting very root of the prosecution case or jurisdiction of the court are produced by and considered at the instance of accused at the initial stage such as taking cognizance or hearing on the point of charge. The prolonged trial may be avoided, momentum and pace to early and speedy disposal of the cases which has not become need and demand of the day, in order to protect the over burden judicial system may also be provided.

19. What is started above in some of the forgoing paragraphs need consideration by legislature and other competent authority but unless any change in the law takes place either by making any amendment or judicial pronouncement by competent courts. The law of the land on the point is as pronounced by their Lordships in Debendra Nath Padhi (Supra) that "at the time of framing charge or taking cognizance accused has no right to produce any material."

20. So far as the instant case is concerned, learned Counsel for the petitioners by lying emphasis on Annexure -2 i.e. First Information Report of Bibhutipur P.S. Case No. 119/2002 instituted on the fardbeyan of opposite party No. 2 recorded on 15.09.2002 against Rishikesh Singh and Sanjeev Singh, the two accused persons in that case, wherein she appears stating about her marriage with Surendra Paswan, from whom she had given birth of two children, further working as labourer of Rishikesh Singh, evil eyes of his son Sanjeev Singh upon her. Ultimately, Sanjeev Singh roughly 3 1/4 years before in absence of her husband abducted her with the help of his associates and regularly committed rape upon her at secret places roughly 3 1/2 months thereafter Bibhutipur Police

Station got her rescued thereafter she was residing with her husband, but 15 days thereafter again she was abducted by Sanjeev Singh and his associates and the ring leader sexually assaulted her brought to Delhi, where she gave birth of a female child. Roughly, six months before Sanjeev Singh brought her back got and hut erected wherein she was kept but said Sanjeev Singh was satisfied so left to maintain her. One month thereafter Rishikesh Singh started sexually assaulting her causing pregnancy of four months, she was persuaded to get the same aborted which was not acceptable to her and was even regularly threatened so with the help of some well-wisher she arrived at the police station and got the statement recorded. They are none else than petitioner Nos. 3, 4, 5 and 6.

21. On the basis of the above, the contention of learned Counsel was that subsequent to filing of the above case, the informant went in collusion of the accused persons there and got the present complaint filed alleging same occurrence/offence against the petitioners here. With the specific allegation that the petitioners taking undue advantage of obtaining her signatures got the case falsely instituted against Rishikesh Singh and his son Sanjeev Singh whereas they were innocent.

22. On behalf of learned Counsel for the petitioners, the relevant documents were produced before the court below. They are also produced here added with the deposition of the complainant in Sessions Trial No. 145/2002 arising out of Bibhutipur P.S. Case No. 119/2002, wherein she has not only supported the allegation levelled against father and son, but, as also stated that the duo got the complaint falsely lodged against all the petitioners here. Copy of such deposition has been filed along with supplementary affidavit.

23. It is also contended that petitioners No. 3, 4 and 5 have also been examined in the said Session Trial respectively as P.Ws.7, 8 and 6 and both the accused persons here has been found guilty and sentenced to undergo R.I. for 10 years and payment of fine of Rs. 15,000/-. Of course, Cr.App. No. 301/2008(SJ) preferred by the two accused persons, Rishikesh Singh and Sanjeev Singh against their conviction and sentence is pending before this Court.

24. No doubt, First Information Report of Bibhutipur P.S. Case No. 119/2002 was instituted much before filing of the instant complaint with almost similar allegation but against different person for almost similar offence during coinciding period and if the relevant documents are permitted under law to be filed on behalf of the accused persons and considered at the initial stage by the court holding inquiry. Though, the documents were at the relevant time simply by way of contrary statements of some author as regard to the offenders but court holding inquiry could have been in a position to put some relevant questions to the complainant and her witnesses to find out the truth, but, since the law as stated above does not permit consideration of any document filed on behalf of the accused persons at this stage, the court below rightly refused to consider and committed no wrong by doing so.

25. Now questions comes whether all such documents referred to above may be considered by this Court and proceeding before the court below be quashed, the answer would be "no".

26. Learned Counsel for the petitioners by placing reliance upon the decision of the Apex Court in a case of Minakshi Bala Vs. Sudhir Kumar and Others, tried to submit that document produced are sufficient to change, the entire complex of the proceedings against them but the aforesaid decisions also finds considered by the Apex Court in case of State of Orissa Vs. Debendra Nath Padhi, referring para 7 of the judgment in para 21 it is held that

It is evident from the above that this Court was considering the rare and exceptional cases where the High Court may consider unimpeachable evidence while exercising jurisdiction for quashing u/s 482 of the Code.

27. The fardbeyan of the complainant coupled with her statement before the trial court as a witness both are a piece of evidence which may be rebutted or explained and unless the author of such statements is given any opportunity to explain such statements at appropriate stage with specific drawing of his/her attention towards earlier statements. They are not admissible piece of evidence, moreover finding of trial court in the earlier case is pending decision of appeal, (copy of judgment so delivered is also not produced).

28. Thus, in the light of aforementioned discussions, finding no merit in this case, it is hereby dismissed. The court below is directed to proceed expeditiously to decide the issues involved on their own merit.