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**(2008) 03 JH CK 0008**  
**In the Jharkhand High Court**

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| Ravi Shankar Kumar @ Tinku @ Ravi Shankar Prasad | APPELLANT  |
| Vs                                               |            |
| The State of Jharkhand                           | RESPONDENT |

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**Date of Decision :** 10-03-2008

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 103, 154, 156, 161, 162  
Penal Code, 1860 (IPC) — Section 341, 376  
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —  
Section 3

**Citation :** (2008) 03 JH CK 0008

**Hon'ble Judges :** D.K. Sinha, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

D.K. Sinha, J.—The petitioner has invoked the jurisdiction of this Court u/s 482 Cr.P.C. for quashing the order dated 5.4.2007 in G.R. No. 621/05 corresponding to T.R. No. 768 arising out of Madhupur P.S. Case No. 221 of 2005 passed by the S.D.J.M., Madhupur at Deoghar whereby and whereunder cognizance was taken for the offence u/s 376 I.P.C. against the petitioner Ravi Shankar Kumar @ Tinku @ Ravi Shankar Prasad and further for quashment of the entire criminal prosecution against him.

2. The prosecution story lies in a narrow compass.

3. The complainant Monika Marandi presented a complaint case vide P.C.R. Case No. 357 of 2005 before the S.D.J.M., Madhupur at Deoghar alleging inter alia that she was living with her elder sister and was continuing her studies there. On the information received that her brother-in-law Umesh Kumar was returning to Madhupur Station, she went to Madhupur Station with her elder sister with her child but he did not come. She along with her elder sister and child came to Madhupur bus stand to board a Giridih bound bus. In the meantime, a sumo vehicle bearing registration No. JH 11B 8399 came and stopped near them. The accused Ravi Shankar Kumar ? Tinku @ Ravi Shankar Prasad i.e. the petitioner

herein, who was known to the sister of the complainant enquired and when he came to know that both had to return back to Giridih, he offered that ha would take them away to their home on the sumo. It was narrated further that when the sumo vehicle proceeded carrying them from Madhupur Chowk, the husband of the sister of the informant after identifying his wife and the sister-in-law alarmed to stop the vehicle but it did not. It was alleged that after covering some distance, the petitioner closed the glasses of the windows of the vehicle and alighted from the vehicle and started enjoying liquor with his three associates. They also insisted the complainant to consume the liquor but she refused, whereupon, in spite of her resistance the petitioner could be able to administer liquor forcibly in her mouth with the aid of his three friends. Such act of the petitioner was opposed by the elder sister, whereupon the petitioner snatched the child from her lap and threatened that in case of any protest, her child would be thrown out from the running vehicle After covering some distance the other persons alighted from the sumo vehicle taking her sister and her child and it was alleged that the petitioner committed rape on the complainant in the vehicle itself. During commission of the offence she became unconscious. The petitioner and other culprits dropped the complainant and her sister with the child by extending threat that her entire family would be eliminated lest she would convey the matter to anyone. They anyhow came to their house where they narrated the occurrence to the brother-in-law. She was taken to Hospital at Giridih but was advised to first inform the police. The Giridih police refused to institute any case on the pretext of jurisdiction of the alleged occurrence. She then came to Madhupur Police Station but even there no case was registered. Ultimately she came to Deoghar where she instituted complaint case. The S.D.J.M. referred the matter u/s 156(3) Cr.P.C. and accordingly, Madhupur P.S. Case No. 221 of 2005 was registered for the offence u/s 376(2)(g)/341 I.P.C. as also u/s 3(x) S.C. & ST. (Prevention of Atrocities) Act against the petitioner but after investigation the police submitted final form exonerating the criminal liability of the petitioner. The S.D.J.M., Madhupur at Deoghar after receipt of the final form issued notice to the informant-complainant but she could not appear. Yet, the learned S.D.J.M. took cognizance of the offence u/s 376 I.P.C. upon being satisfied with the prima facie materials against the petitioner.

4. The petitioner had earlier invoked the writ jurisdiction of this Court vide W.P. (Cr.) No. 162 of 2006 for the quashment of the entire investigation and criminal proceeding of the police case Similarly, the informant-complainant Monika Marandi had also preferred a Criminal Writ No. 93 of 2006 for appropriate writ commanding upon the Investigating Officer for arresting the petitioner but both the writ petitions were dismissed as withdrawn.

5. The learned Counsel Mr. Roy submitted that no opportunity was accorded to the petitioner u/s 319 Cr.P.C. by the S.D.J.M. before cognizance of the offence u/s 376 IPC was taken, exclusively triable by the Sessions Court and that only Sessions Judge was empowered under Section 193 Cr.P.C. to Issue summons/ notice to the accused not being sent up for trial. The learned Counsel asserted

that the S.D.J.M. was therefore, not competent to take cognizance of the offence against the person or persons other than those, recommended or sent up for trial for the offence exclusively tried by the Sessions Judge.

6. The moot question raised for consideration in the instant case was as to whether the S.D.J.M., Madhupur at Deoghar, hereinafter referred to as the cognizance taking Court, for its territorial jurisdiction, was competent to take cognizance of the offence u/s 376 IPC against the petitioner to whom the Investigating Officer had given clean chit exonerating his criminal liability by submitting final form?

7. Learned Counsel submitted that in course of investigation, statement of several witnesses were recorded u/s 161 Cr.P.C. including the parents of the complainant Monika Marandi, a minor girl about 12, and her parents denied the occurrence of gang rape on her on 18.9.2005. They stated before the I.O. that she was with them on the alleged date. Learned Counsel took the defence that the father of the petitioner was murdered, and upon full trial, one Surendra Nath Tiwari with two others were convicted and sentenced to undergo R.I. for their lives and were lodged at Giridih Jail to serve out their sentences. During their detention, Umesh Prasad Singh the so-called brother-in-law of Monica Marandi @ Basanti was also in jail with them in a case of cheating and forgery and pursuant to a criminal conspiracy for avenging their conviction, Surendra Nath Tiwari and the co-convicts implanted Umesh Prasad Singh to set up Basanti Marandi his wife and sister-in-law Monika to fabricate and institute a false case against the petitioner.

8. Finally, submission was made that the learned S.D.J.M. without any Protest Petition from the side of the informant took the cognizance of the offence though the complainant informant had not chosen to appear in the Court and protest in spite of the notice sent to her. The learned Counsel exhorted that the jurisdiction u/s 319 Cr.P.C. was vested with the trial Court to summon an accused who was not sent up for trial, on the basis of the materials collected in course of trial or an enquiry. In this case learned S.D.J.M. grossly erred by issuing non-bailable warrant of arrest against the accused-petitioner after taking cognizance of the offence u/s 376 I.P.C. against him.

9. Mr. B.B. Sinha, learned A.P.P. vehemently opposed the contention and submitted that the F.I.R. was Instituted against the named accused-petitioner for the offence of gang rape as also u/s 3(x) S.C. & S.T. (Prevention of Atrocities) Act but the Investigating Officer submitted final form.

10. Learned A.P.P. further pointed out that the S.D.J.M. by the elaborate order impugned, dated 5.4.2007, observed that the statements of the interested witnesses, who were the colleagues of the petitioner in the office of L.R.D.C, Gridih were recorded by the I.O. u/s 161 Cr.P.C. as contained In para 25, 26, 27, 28, 29, 30 & 31 of the case diary but they were hearsay witnesses. They consistently narrated that a false case was instituted by a tribal woman against

the petitioner and that the parents of Monika Marandi had also not supported the allegation of rape against the petitioner. Yet, the Investigating Officer supported the statement of the informant Monika Marandi u/s 164 Cr.P.C. before the Magistrate which was delivered without undue influence and by her free will. Such allegation was supported by her elder sister Anita Hembram and therefore, learned S.D.J.M. having been satisfied, took the cognizance of the offence u/s 376 I.P.C. against the petitioner which was appropriate.

11. Advancing his argument learned A.P. P. submitted that while discussing the scope of Section 190 204 173(2) 154 162 and 319 of the Code of Criminal Procedure, the Apex Court in *M/s. SWIL Ltd. Vs. State of Delhi and Another*, observed:

At the stage of taking cognizance of the offence, provisions of Section 190 Cr.P.C. would be applicable. As per this provision, the Magistrate takes cognizance of an offence and not the offender. After taking cognizance of the offence, the Magistrate u/s 204 Cr.P.C. is empowered to Issue process to the accused. At the stage of Issuing process, it is for the Magistrate to decide whether process should be issued against particular person/persons named in the charge-sheet and also not named therein. For that purpose, he is required to consider the F.I.R. and the statements recorded by the police officer and other documents tendered along with charge-sheet. Further, upon receipt of police report u/s 173(2) Cr.P.C., the Magistrate is entitled to take cognizance of an offence u/s 190(1)(b) even if the police report is to the effect that no case is made out against the accused by ignoring the conclusion arrived at by the investigating officer and independently applying his mind to the facts emerging from the investigation by taking into account the statement of the witnesses examined by the police. At this stage, there is no question of application of Section 319 Cr.P.C. That provision would come into operation in the course of any enquiry into or trial of an offence. In the present case, neither the Magistrate was holding enquiry as contemplated u/s 2(g) Cr.P.C. nor had the trial started. He was exercising his Jurisdiction u/s 190 by taking cognizance of an offence and issuing process.

12. In the present case learned S.D.J.M., Madhupur at Deoghar was neither holding enquiry as contemplated u/s 2(g) Cr.P.C. nor had he proceeded with the trial. On the other hand, he was exercising his jurisdiction u/s 190 Cr.P.C. by taking cognizance of an offence against the petitioner and not u/s 316 Cr.P.C. as submitted.

13. In *Minu Kumari and Another Vs. The State of Bihar and Others*, the Apex Court held that:

When a report forwarded by the police to the Magistrate u/s 173(2)(i) is placed before him several situations arise: the report may conclude that an offence appears to have been committed by a particular person or persons and In such a case, the Magistrate may either (1) accept the report and take cognizance of the

offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation u/s 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he again has option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police u/s 156(3). The position is, therefore, now well settled that upon receipt of a police report u/s 173(2) a Magistrate is entitled to take cognizance of an offence u/s 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation had made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers u/s 190(1)(b) and direct the issue of process to the accused.

14. The impugned order dated 5.4.2007 indicates that the learned S.D.J.M. had taken the cognizance of offence u/s 376 I.P.C. against the petitioner after perusal of the material supplied u/s 173(2) Cr.P.C. including the statement of prosecutrix recorded u/s 164 Cr.P.C. in the exercise of the jurisdiction u/s 190(1)(b) Cr.P.C. which stands strengthened by the propositions of law as referred to above. Jurisdiction of taking cognizance in certain circumstances except as otherwise expressly is provided to Sessions Judge, u/s 103 Cr.P.C. and that too after commitment. It would not be out of place to mention that the order-sheet dated 14.12.2006 depicts the issuance of notice upon the prosecutrix but without service report of the notice on the record, therefore, it can safely be presumed that no notice was ever served upon her. The fact therefore, remains that the prosecutrix was ignorant that the Investigating Officer had submitted final form exonerating the criminal liability of the petitioner and in that manner she was denied of an opportunity to protest, if at all she could opt.

15. In the facts and circumstances and proposition of law as laid down, I observe that the learned Senior Counsel failed to show any ground to call for interference in the cognizance order impugned dated 5.4.2007 whereby the process has been directed to be issued by the S.D.J.M., Madhupur at Deoghar in Madhupur P.S. Case No. 221 of 2005 for the offence u/s 376 I.P.C. against the petitioner.

There being no merit this petition is dismissed with the direction to the petitioner to surrender forthwith.