
(2002) 01 JH CK 0043

In the Jharkhand High Court

Case No : Criminal Revision No. 407 of 2001

Sahdeo Pandit and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 17-01-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 375, 376, 493

Citation : (2002) 2 CRIMES 218

Hon'ble Judges : Vinod Kumar Gupta, C.J

Bench : Single Bench

Advocate : Manoj Kumar Sah, for the Appellant; Additional P.P., for the Respondent

Judgement

V.K. Gupta, C.J.—This is yet another very unfortunate case where the learned trial court appears to have rejected the prayer of the petitioners without any application of mind whatsoever and by a totally mechanical, and patently erroneous and illegal exercise of jurisdiction . The petitioners had prayed to the trial Court that the charge u/s 376 of the Indian Penal Code was not at all made out and the same be accordingly dropped. Consequentially, the petitioners had submitted that the matter be sent back to the concerned Magistrate for trial of the offence only under Sections 493 and 323 of the Indian Penal Code, but not for the offence u/s 376 of the Indian Penal Code. By dealing with the aforesaid contention of the petitioners in a slipshod manner, the learned court below rejected the prayer of the petitioner. Hence, the present revision petition.

2. The first information report (FIR) clearly shows that the prosecutrix/victim lady was a hundred percent consenting party to the act of sexual intercourse between herself and the accused Ashok Pandit. The FIR being in Hindi, the English translation of the relevant extract reads thus :--

"The husband of the prosecutrix had died five years back. The prosecutrix has two sons and a daughter for the last three years. The accused Ashok Pandit has been regularly visiting the house of the prosecutrix at night and would make

overtures to her about being in love with her. The accused Ashok Pandit is unmarried. Since the prosecutrix had been feeling lonely, and without any shelter in life, she consented to, and accepted his offer of love and both of them thereafter started living as husband and wife. Ashok Pandit accused, to his full satisfaction, enjoyed the sexual intercourse with the prosecutrix and thereafter the prosecutrix became pregnant....."

3. Now, in the face of the aforesaid contents in the F.I.R., on the abovementioned application/prayer of the petitioners, the learned trial court disposed of, by dismissing, their application on the basis of the following observations:--

"According to the case of the prosecution accused Ashok Pandit induced the complainant to have cohabitation with him and they lived as wife and husband. Ashok Pandit treated the complainant as wife and also assured to marry to her. She carried a pregnancy thereafter but the family members did not like, it and therefore accused Ashok Pandit made attempt to have abortion of the pregnancy for which he gave a medicine to her. On the petition of the complainant Most. Chinta widow of Mangru Pandit case was registered and the I.O. of the case after completing investigation submitted chargesheet against the accused persons who are the family members of accused Ashok Pandit for the offence punishable u/s 493, 376 and 323/34 IPC. Materials are available on the record and perused the same. On considering the materials available on record and in the circumstance of the case, it is found that there is no ground at all to allow the prayer of the accused persons and therefore the prayer is rejected and the accused persons are directed to be physically present in court on 21.8.2001 for framing charge against them. (dictated)."

4. Before I embark upon any decision or critical examination of the legality and correctness of the order of the learned court below, I may not profitably lose sight of the fact that in this case as many as seven persons were impleaded as accused, Ashok Pandit being only one of them.

5. Section 375 of the Indian Penal Code defines "rape" the relevant extract of this section as it pertains to this case reads thus:--

"375. Rape.--A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:--

First--Against her will.

Secondly--Without her consent.

* * *

6. Even a layman, even a semi-literate lay-man, after reading the aforesaid version of the prosecutrix would have no hesitation whatsoever to come to the conclusion that no ingredient of the offence of rape has even been alleged in the F.I.R., what to speak of the same being established or even made out. This is a

case where on her own showing, the prosecutrix was a willing, full consenting party to the act of sexual intercourse with the accused-petitioner. Ashok Pandit. Admittedly, the prosecutrix was also not under the age of 16 years. She was a full-grown adult; rather an over-grown old lady having grown up children. On her own showing, she continued without any protest, demur or objection with the affair of having sexual intercourse with accused, Ashok Pandit, for a long time. She did not protest or object because she was a willing partner: a consenting party and yet the prosecution slapped the charge u/s 376 IPC and the learned court below so conveniently, so mechanically put its seal of approval of the same.

7. And what about the other six petitioners? Why were these persons made to suffer the ignominy of a charge u/s 376 when admittedly there was not even accusation against them ? And why didn't the trial court bother to consider this aspect at least?

8. It is indeed a travesty of justice that a Court, and that too a Court presided over by a judicial officer of the rank and status of an Additional Sessions Judge, being confronted with a situation like the present one, does not bother to understand and appreciate the prayer of the petitioners and in total disregard to the facts of the case as also the law on the subject, castigates the petitioners, incarcerates them and for no fault of them even when no ingredient with respect to the commission of any criminal act in so far as the petitioners are concerned (with relation to Section 376 IPC) has been made out.

9. Is it that the learned trial court did not know the elementary principles of law? Is it that the learned trial court did not even bother to understand what is the importance and meaning of Section 375 IPC read with Section 376? Or is it that the learned trial court did not bother even to go through the copy of the FIR and read for itself as to what was the gravement of the charge against the petitioners? I think the tone and tenor of the order suggests that with respect to all the aforesaid questions, it can be safely said that the learned trial court did not do anything. Or, is it that the learned trial court acted more as an agent of the prosecution than as an Administrator of justice?

10. For the foregoing reasons, therefore. I allow this petition and quash and set aside the impugned order dated 10.8.2001 passed in S.C. No. 334/98 by the court below with all consequences.

11. Let a copy of this order be placed on the administrative file of the P.O. of the learned court below for appropriate action on the administrative side.

12. A copy of this order shall be circulated by the Registrar General of this Court to all the District and Sessions Judges of the State and all the Chief Judicial Magistrates for their information, compliance and with clear direction to circulate the copies, in turn, to all the Judicial Officers under their Jurisdiction, so that everyone concerned takes due notice of the observations contained herein and while dealing with the contentions of the parties in criminal cases, it is ensured that such contentions are dealt with, disposed of and final orders passed on their

merits, strictly in accordance with law and not by a mechanical exercise of jurisdiction or without proper application of mind. The Courts of law are not supposed to act as agents of either the prosecution or the accused. They have to administer justice to all the parties in accordance with law.

13. Petition stands disposed of.