

(2013) 07 JH CK 0185
In the Jharkhand High Court
Case No : Criminal Rev. No. 966 of 2012

Sammukh Yadav and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 120(B), 307, 323, 34, 494

Citation : (2013) 07 JH CK 0185

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Rajni Kant Ojha, for the Appellant;

Final Decision : Allowed

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioners and learned counsel for the State. The petitioners are aggrieved by the order dated 29.8.2012 passed by the learned Sessions Judge, Chatra, in S.T. No. 48 of 2012, whereby the application filed by the petitioners under Sections 227 and 228 of the Cr. P.C., for discharge, making the alternative prayer that in the facts of this case the offence u/s 307 of the Indian Penal Code was not made out, has been rejected by the Court below.

2. The petitioners have been made accused in Pratappur P.S. Case No. 63 of 2011, corresponding to G.R. No. 763 of 2011, for the offence under sections 323, 494, 498(A), 120(B), 307/ 34 of the Indian Penal Code and Sections 3/ 4 of the Dowry Prohibition Act.

3. The case was instituted on the basis of the complaint filed by one Bindu Devi against the petitioners, which was sent for institution of the police case and accordingly the police case was instituted and investigation was taken up. It appears that after investigation the police has submitted charge-sheet u/s 307 of the Indian Penal Code also, and cognizance was taken for the said offence as

well, and the case was committed to the Court of Session, where the petitioners filed their application for discharge, making an alternative prayer that the offence u/s 307 of the Indian Penal Code was not made out and the other offences were not triable by the Court of Session.

4. From the complaint petition, on the basis of which the police case was instituted, it appears that apart from the other allegation of subjecting the complainant to cruelty and torture for demand of dowry, there is allegation that the accused persons poisoned the food of the complainant, which she came to know, and she threw the food outside the window, which was eaten by a dog and the dog died. On the basis of this allegation in the complaint petition, the case was filed u/s 307 of the Indian Penal Code also.

5. The impugned order shows that the petitioners filed the application under Sections 227 and 228 of the Cr. P.C., stating that there was nothing on the record to substantiate the allegation that the food of the complainant was poisoned, as there is no F.S.L. report and there was no material even in the case diary to substantiate the allegation. The Court below however, has taken into consideration the allegation made against the petitioners and has rejected the application filed by the petitioners under Sections 227 and 228 of the Cr. P.C., stating that on the basis of the allegation, the offence is made out u/s 307 of the Indian Penal Code. The impugned order clearly shows that in the case diary there is no material to substantiate this allegation.

6. Learned counsel for the petitioner has submitted that the impugned order passed by the Court below is absolutely illegal, in as much as, only on the basis of the allegation, the charge cannot be framed against the petitioners u/s 307 of the Indian Penal Code. It is submitted that the case was investigated by the police and the impugned order clearly shows that there is no material in the case diary to substantiate the allegation and accordingly, the petitioners ought to have been discharged from the offence u/s 307 of the Indian Penal Code.

7. Learned counsel for the State on the other hand has opposed the prayer submitting that on the basis of the allegation, the offence is clearly made out.

8. After having heard learned counsels for both sides and upon going through the impugned order, I find force in the submission of the learned counsel for the petitioner. The Court below has rejected the application filed by the petitioners under Sections 227 and 228 of the Cr. P.C., only on the basis of the allegation made in the complaint petition. The Court below has given a clear finding in the impugned order that the said allegation had not been supported by any material in the case diary. In view of this finding by the Court below, the impugned order rejecting the application filed by the petitioners under Sections 227 and 228 of the Cr. P.C., cannot be sustained in the eyes of law. Accordingly, the impugned order dated 29.8.2012 passed by the learned Sessions Judge, Chatra, in S.T. No. 48 of 2012, is hereby, set aside, and the Court below is directed to pass the order afresh u/s 228 of the Cr. P.C., in accordance with law and on the basis of

the materials found during the investigation of the case. This application is accordingly, allowed.