
(2005) 02 JH CK 0088

In the Jharkhand High Court

Case No : Criminal M.P. No. 583 of 2004

Shambhu Singh and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 02-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 202, 482
Penal Code, 1860 (IPC) — Section 147, 323, 379, 406, 420

Citation : (2005) 3 JCR 470

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : M.K. Dey, for the Appellant; A. Kumar, S.K. Keshari, G.S. Prasad and A. Kumar, for the Respondent

Final Decision : Allowed

Judgement

Hari Shankar Prasad, J.—This application u/s 482 of the Code of Criminal Procedure has been filed for quashing the order dated 28-2-2004 passed by Judicial Magistrate, Hazaribagh in Complaint Case No. 646/2003, Corresponding to T.R. No. 1009/2004.

2. Facts leading to the filing of this application are that on the date of occurrence i.e. on 29-6-2003 at about 9 AM opposite party No. 2 complainant was in his house along with his wife and children and at that moment the wife of the complainant was getting ready to go to the market and at that time all the accused persons, who are petitioners here, variously armed, entered into the house of the complainant and started assaulting the wife of the complainant and snatched away a golden chain worth of Rs. 8.000/- and cash of Rs. 500/- from the wife of the complainant. On this piece of allegation a complaint case was filed on 14-7-2003. Complainant was examined on SA on 16-8-2003 and enquiry was held u/s 202, Cr. PC. and three witnesses were examined and all the witnesses sported the occurrence and on the basis of enquiry held u/s 202, Cr. P.C. learned Court of Judicial Magistrate took cognizance against the petitioners under

Sections 147, 323, 448 and 379, IPC.

3. Learned counsel appearing for the petitioners submitted that prior to the filing of the complaint case, there was a proceeding between the parties u/s 107 Cr.P.C. in which petitioner is the first party and the complainant is the second party and the learned SDM by order dated 6-11-2003 has mentioned in the order that first party claims a piece of land vide registered sale deed and the second party also claims the land vide agreement from the same owner and considering that there is likelihood of breach of peace at the hands of second party, the members of second party were directed to execute bond of Rs. 5000/- each. From the above order dated 6-11-2003 it is apparently clear that the complainant, who was the second party was the aggressor and hence he was directed to execute bond. It is stated that the dispute is for a piece of land 10" wide and 40 long and the aforesaid land in question belonged to one Tarkeshwar Nath Kataria and the opposite party No. 2 used to land as party and the said Tarkeshwar Nath Kataria executed an agreement with the opposite party No. 2 and the opposite party No. 2 paid Rs. 10.000/-. It is further stated that total value of the sale was Rs. 25000/- but the opposite party No. 2 paid only Rs. 10.000/- and failed to pay the remaining amount of Rs. 15.000/- by April, 2003, which was the date fixed for payment of money. It was further pointed out that as the time was essence of the contract and as such, Tarkeshwar Nath Kataria chose to sell the land to the petitioner No. 1 and petitioner No. 1 purchased the same by way of registered sale deed executed in the month of May, 2003 and as a result of this action, the opposite party No. 2 became furious and he threatened both Tarkeshwar Nath Kataria and petitioner No. 1 to implicate them in a false criminal case. The complainant opposite party No. 2 filed a complaint case No. 506/2003 in the Court of CJM Hazaribagh making Tarkeshwar Nath Kataria as an accused in the said matter cognizance of the offence was taken by order dated 12-8-2003 under Sections 406 and 420 IPC. It is further submitted that present case is filed as a result of vindictiveness attitude taken by the complainant opposite party No. 2 against the petitioners including petitioner No. 1 and the case is one vague one and no reason has been assigned as to why the petitioners entered into the house and assaulted the wife of the complainant and snatched golden chain worth of Rs. 8000/- and a sum of Rs. 500/-. It was further submitted that entire family members of petitioner No. 1 have been falsely implicated in the present case.

4. On the other hand, learned counsel for the complaint-opposite party No. 2 submitted that after due consideration of the allegations made in the complaint petition and after holding inquiry in the case and on the basis of the evidence of witnesses, cognizance in the case has been taken. It was further submitted that when on the basis of allegations in the complaint petition prima facie case is made out, the High Court has no jurisdiction to quash the proceeding and the High Court will not be justified in judging probability, reliability and genuineness of the allegation made and power to quash proceeding should be exercised only in extra-ordinary circumstances. In this connection, reliance was placed upon

State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others, . It was further submitted that quashing of the complaint on the ground that the complainant disclosed commercial or money transaction is not justified, as cheating cases are committed in course of commercial or money transaction and, therefore, such case should not be quashed. In this connection, reliance was placed upon Rajesh Bajaj Vs. State NCT of Delhi and Others, .

5. After having considered the submissions of the parties and after going through the complaint petition, it appears that in fact there is dispute between the parties relating to a piece of land comprising 10 ft wide and 14 ft long which is being used by the complaint-OP No. 2 as path and Tarkeshwar Nath Kataria had in fact entered into an agreement with opposite party No. 2-complainant and thereafter complainant-O.P. No. 2 paid Rs. 10.000/-, although total value of the sale was Rs. 25.000/-, but the opposite party No. 2 did not pay the remaining amount of Rs. 15.000/- by April 2003 which was due date for payment of the money and when he fails to make payment, Tarkeshwar Nath Kataria sold the land to the petitioner No. 1 Shambhu Singh and this causes all troubles and being vindictive towards this petitioner and others, this complaint case has been filed, from perusal of which it does not appear as to what for petitioners entered into the house of opposite party No. 2 and snatched the golden chain, Rs. 8,000/- from the wife of the complainant-O.P. No. 2. But it appears that land dispute is behind this incident. In this connection, reliance may be placed upon Tarkeshwar Nath Katariyar Vs. State of Jharkhand and Another, . Reliance may also be placed upon State of Haryana and others Vs. Ch. Bhajan Lal and others, wherein some circumstances have been discussed in para-108 under which criminal case can be quashed. Circumstances Nos. 5 and 7 fit in this case and is quoted herein below :

"5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

6. From perusal of all these materials on record, it appears that this is a fit case in which High Court should exercise its power u/s 482 of the Code of Criminal Procedure to quash the proceeding. In that view of the matter, this application is allowed and the order dated 28-2-2004 passed in Complaint Case No. 646 of 2003 corresponding to T.R. No. 1009 of 2004 is hereby quashed.