
(2004) 11 JH CK 0006

Jharkhand High Court

Case No: Criminal M.P. No. 233 of 2004

Ekramul Haque and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: Nov. 2, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 323, 482
- Penal Code, 1860 (IPC) - Section 147, 307, 323, 325, 34

Citation: (2005) 1 JCR 237

Hon'ble Judges: Hari Shankar Prasad, J

Bench: Single Bench

Advocate: A. Banerjee, for the Appellant; APP, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Hari Shankar Prasad, J.

This application u/s 482 of the Code of Criminal Procedure has been filed for quashing the order dated 5.2.2004 passed in I.E.L. P.S. Case No. 24/2003, whereby and whereunder the learned Judicial Magistrate, 1st Class, Bermo at Tenughat has taken cognizance against the petitioners under Sections 447/323/307/34, IPC.

2. The facts giving rise to the filing of this application are that informant-opposite party No. 2 has lodged an FIR alleging therein that on 13.11.2003 he was returning after opening his roja and when he reached near the house of Imamul Haque then Ekramul, Imamul, Reyajul, Sagir, Bajul and Pappu came out with hockey stick and chain in their hands and assaulted the informant on his head as a result of which he fell down and when on holla informant's lather reached, then petitioners including accused persons fled away.

3. Learned counsel appearing for the petitioners, submitted that no specific allegation of assault has been levelled against any of the persons including the

petitioners and there is omnibus allegation levelled against the petitioners. It is further submitted that from perusal of injury report of the informant, it will appear that informant has sustained two injuries and the doctor has opened that both the injuries are simple in nature. It is further pointed out that in the FIR it is alleged that as many as seven persons assaulted the informant and they continued to assault the informant till informant fell down on the ground, but surprisingly enough, only two injuries have been caused on the person of the informant-opposite party No. 2.

4. On the other hand, it is stated that informant and his associates assaulted petitioner Imamul Haque, who also sustained injuries and because of said assault by the informant and his companions some scuffle took place and further that on that very basis petitioner Imamul gave a fardbeyan and on the basis of that Jardbeyan a case was registered bearing I.E.L. P.S. Case No. 25/2003 under Sections 147 323 325, IPC. It is further submitted that in the present case charge-sheet has been submitted under Sections 147 323 307 read with Section 34, IPC and cognizance has been taken in the case and in fact no case u/s 307, IPC is made out. It is also submitted that from perusal of Annexure 2, which is injury report, it will appear that both the injuries are simple in nature, although caused by hard and blunt substance on head.

5. On the other hand, learned APP for the State submitted that both the injuries are on head and head is a vital part of the body and, therefore, a case u/s 307, IPC is made out.

6. From perusal of complaint petition, it appears that as man as six persons surrounded the informant opposite party No. 2 with hockey stick and chain and assaulted him on his head, as a result of which he fell down and still then they continued to assault the informant opposite party No. 2. But from perusal of Annexure 2, which is injury report, it appears that only two injuries have been found on the person of the informant opposite party No. 2 although both the injuries are on head, but those injuries are simple in nature, caused by hard and blunt substance. Further on behalf of the petitioners also a case appears to have been lodged, which has been registered as I.E.L. P.S. Case No. 25/2003 under Sections 147 323 325/34 IPC, and date of occurrence is same and time of occurrence is also the same as it appears from perusal of Annexure 3, From perusal of contents of complaint petition, it appears that six persons assaulted the informant but only two injuries have been caused and, therefore, their intention was not to cause death, as injuries have not been found to be grievous and, therefore, in the facts and circumstances of the case, no case u/s 307 IPC is made out and charge-sheet submitted u/s 307 is hereby quashed and case will proceed under other sections, in which cognizance has been taken. However, if the learned court below, at time of trial, finds that a case u/s 307 IPC is made out then learned court below will commit the case to the Court of Sessions u/s 323 Cr PC.

7. With the aforesaid observation and direction, this application is disposed of.