(2009) 07 JH CK 0017

Jharkhand High Court

Case No: Criminal M.P. No. 833 of 2006

Sumitra Devi and Others		APPELLANT
	Vs	
The State of Jharkhand and Raju Mahto		RESPONDENT

Date of Decision: July 16, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 198
- Penal Code, 1860 (IPC) - Section 323, 341, 494

Hon'ble Judges: Prashant Kumar, J

Bench: Single Bench

Advocate: Tarun Kumar Sinha, for the Appellant; A.K. Jha, APP, for the Respondent

Final Decision: Allowed

Judgement

Prashant Kumar, J.
In this application the petitioner prayed for quashing the entire criminal proceeding arising out of Ahilyapur P.S. Case No. 53 of 2004 corresponding to G.R. No. 1613 of 2004, T.R. No. 861 of 2006 pending in the Court of Sri Kumar Pawan, Judicial Magistrate, Giridih.

2. It appears that Raju Mahto lodged a written report alleging therein that he married in the year 1988 with Sumitra Devi, daughter of Kamaldeo Mahto of village Ahilyapur. It is stated that after the marriage the said Kamaldeo Mahto took away his wife and lodged a case against him in the year 1994. It is stated that in above case he has been convicted. It is further alleged that thereafter on 30.8.2004 the said Kamaldeo Mahto along with Rohit Mahto, Laljit Mahto solemnized the second marriage of aforesaid Sumitra Devi with one Manoj Verma at Dukhiya Math. It is alleged that when the informant forbed them from doing so, he has been assaulted by the aforesaid accused persons.

3. It appears that on the basis of aforesaid written report, Ahilyapur P.S. Case No. 53 dated 7.8.2004 under Sections 341, 323, 494 of the IPC was instituted and police took up investigation. It further appears that after completing the investigation, police submitted charge sheet in the court of CJM, Giridih who took cognizance of the offence u/s 341, 323 and 494 of the IPC and transferred the case in the court below for trial.

4. It is submitted that from the perusal of written report, it is apparent that the entire occurrence took place in Dukhiya Math, which is under the jurisdiction of Giridih, (Mufassil) Police Station, therefore, lodging of FIR and investigation by Ahilyapur Police Station is wholly without jurisdiction. It is further submitted that the CJM, Giridih wrongly took cognizance of the offence u/s 494 of the IPC on the basis of charge sheet submitted by the police. It is submitted that Section 198 of the Cr.P.C. put an embargo on the power of court from taking cognizance of an offense punishable under Chapter XX of the IPC, except upon a complaint made by some person aggrieved by the offence. It is submitted that since the informant had not filed any complaint before the (sic) Giridih complaining the commission of offence u/s 494 of the IPC, the order of cognizance is bad in law consequently the trial of the accused on the basis of said cognizance is also illegal.

5. On the other hand, learned Counsel appearing for the O.P. No. 2 had submitted that there is no illegality committed by learned CJM, Giridih and / or the Investigating Officer, therefore, this application is liable to be dismissed.

6. Having heard the submission, I have gone through the record of the case. From the perusal of complaint petition, it appears that the occurrence took place on 30.8.2004 at Dukhiya Math. It has been stated that the said Dukhiya Math falls under the jurisdiction of Giridih (Muffasil) Police Station. The O.P. No. 2 had not disputed the aforesaid fact by filing any counter affidavit. Under the Cr.P.C. a police officer incharge of a Police Station has power to investigate a cognizable office committed within the local limits of his police station without the order of Magistrate. Thus if an offence committed beyond the jurisdiction of a police station, police officer has no power to investigate the same unless he has been asked by the competent authority to do so. Under the said circumstance, investigation by the Police Officer of Ahilyapur Police Station of an offence which took place in Giridih (M) Police Station is beyond his jurisdiction accordingly the charge sheet submitted by Officer-in-Charge of Ahilyapur Police Station is illegal and without jurisdiction.

7. I find yet at other illegality in the instant case. It appears that learned CJM, Giridih had taken cognizance of offence u/s 494 of the IPC on the basis of charge sheet submitted by the Officer-in-Charge of Ahilyapur Police Station. It is relevant to mention that offence u/s 494 of the IPC is included under Chapter XX i.e. offence relating to marriage. Section 198 of the Code of Criminal Procedure provides that no court shall take cognizance of an offence punishable under Chapter XX of the IPC except upon a complaint made by some person aggrieved by the offence.

Admittedly the husband (who is the informant of this case) has not filed any complaint in the court that his wife had solemnized second marriage and thereby committed an offence of bigamy. It is also an admitted position that learned C.J.M., took cognizance on the basis of police report. Under the said circumstance, the order of learned CJM by which he took cognizance of the offence u/s 494 of the IPC is illegal and violative of Section 198 of the Cr.P.C.

8. In view of the discussion made above, I find that entire criminal proceeding against the petitioners, in connection with Ahilyapur P.S. Case No. 53 of 2004 corresponding to G.R. No. 1613 of 2004/T.R. No. 861 of 2006, pending in the court of Sri. Kumar Pawan, Judicial Magistrate, Giridih is illegal.

9. In the result, this application is allowed. Entire criminal proceeding in connection with Ahilyapur P.S. Case No. 53 of 2004 corresponding to G.R. No. 1613 of 2004 (T.R. No. 861 of 2006) pending in the court of Sri. Kumar Pawan, Judicial Magistrate, Giridih is hereby quashed.