(2005) 3 BLJR 1733 : (2005) 4 JCR 225

Jharkhand High Court

Case No: Criminal M.P. No. 312 of 2005 with A.B.A. No. 276 of 2005

Ghishu Sk.	APPELLANT
Vs	
State of Jharkhand	RESPONDENT

Date of Decision: June 23, 2005

Acts Referred:
Arms Act, 1959 â€" Section 27#Criminal Procedure Code, 1973 (CrPC) â€" Section 173, 319#Penal Code, 1860 (IPC) â€" Section 147, 148, 149, 307, 326

Citation: (2005) 3 BLJR 1733 : (2005) 4 JCR 225

Hon'ble Judges: Hari Shankar Prasad, J

Bench: Single Bench

Advocate: S.S. Choudhary, for the Appellant; S.N. Rajgarhia, Assistant Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Hari Shankar Prasad, J.
This criminal miscellaneous application along with A.B.A. No. 276 of 2005 are directed against the impugned

order dated 16.9.2004 by which the learned Counsel for the petitioner has prayed for quashing of the order dated 16.9.2004 and also for grant of

anticipatory bail.

2. Facts leading to filing of the application as well as the anticipatory bail application are that the informant lodged and FIR on 8.8.2002 in the

evening at 6 to 7 p.m. that, 12 to 13 persons including this petitioner Ghishu Sk. armed with deadly weapons came inside her house after breaking

the door and ordered to cut Bhola into pieces in the field of cane and to outrage the modesty of the female. On this the remaining culprits caught

Bholi Sk. and Alam Sk. assaulted her with butt of pistol and she fell down whereupon Alam Sk. made attempt to commit rape on her but Bhola

Sk. and Amar Farque saved her. Again this petitioner Ghishu Sk. abused. Thereafter Isrfil Sk. was given a blow of dagger by Kalam Sk. on her

head. It is also alleged that Bhola Sk. was taken away by Mantu Sk. Samapun Sk. Jabbar. Sk., Fazul Sk. and Darek Sk. and assaulted. On this

piece of fardbeyan of Naima Bibi, a case being Rajmahal P.S. Case No. 94 of 2002 dated 9.8.2002 was registered under Sections

147/148/149/448/327/376/511/382/364/326/307 of the Indian Penal Code and u/s 27 of the Arms Act. Police after investigation submitted

charge-sheet in the case.

3. Heard learned Counsel for the petitioner. Nobody appeared on behalf of the State.

4. The contention of the learned Counsel for the petitioner is that though the petitioner is named in the FIR, but police after investigation did not

submit charge-sheet against this petitioner and a protest petition was filed but that protest petition was also not pressed by the informant and when

charge-sheet was not submitted against the petitioner, the learned Magistrate on the perusal of the case diary, took cognizance against the

petitioner.

5. Further contention of the learned Counsel for the petitioner is that the learned Judicial Magistrate has got no jurisdiction to take cognizance

against the accused-petitioner against whom police has not submitted charge-sheet and has submitted final form. In this connection, reliance has

been placed upon the case of Kishori Singh and Anr. v. State of Bihar and Ors., reported in 2000 (3) ECC 816 (SC) : 2001 Cri LJ 123 wherein

the Apex Court has held that Magistrate could not have issued process against those persons who may have been named in the FIR as accused

persons but not charge-sheeted in the charge-sheet that was filed by the police u/s 173 of the Code of Criminal Procedure. It was also submitted

that course open to summon such persons who, though named in the FIR but not charge-sheeted, is the stage u/s 319 of the Code of Criminal

Procedure and not prior to that, Magistrate has got no jurisdiction to take cognizance, when no charge-sheet has been submitted. Stage will come

when such persons may be summoned to face trial only if in course of trial, some evidence comes against such persons. It was also submitted that

in a case triable by the Court of Sessions, Magistrate has got no jurisdiction to take cognizance and in that circumstances Magistrate will commit

the case to the Court of Sessions and if some evidence comes on record before the Sessions Court in course of trial against the accused persons

who had been named in the FIR but not charge-sheeted, then the Court can summon such persons u/s 319 of the Code of Criminal Procedure and

not prior to that. In this connection, reliance has been placed upon Shashikant Singh v. Tarkeshwar Singh 2002 (2) ECC 258 and 1996 SCC 772.

5. In the instant case, what has happened is that though petitioner is named in the FIR but in course of investigation police did not submit charge-

sheet against him, although police submitted charge-sheet against other named accused persons but submitted final form against this petitioner and

the learned Court below after perusal of the case diary, took cognizance against this petitioner and issued processes. As per case laws cited on

behalf of the petitioner, it is clear that Magistrate has got no jurisdiction to take cognizance in a case in which charge-sheet has not been submitted,

although accused has been named in the FIR. In that view of the matter, this application is allowed and the cognizance order dated 16.9.2004

passed in T.R. No. 312 of 2005 arising out of Rajmahal (Radhanagar) P.S. Case No. 94 of 2002 is hereby quashed. Since cognizance against this

petitioner has been quashed by this order, no order need be passed with respect to anticipatory bail application filed on behalf of this petitioner.