

(2008) 03 JH CK 0028

Jharkhand High Court

Case No: Criminal M.P. No. 1284 of 2007

Ghura Devi @ Jiska Nagwati and
Others

APPELLANT

Vs

The State of Jharkhand and
Another

RESPONDENT

Date of Decision: March 16, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 173(1), 173(2), 173(2)(1), 190(1)
- Penal Code, 1860 (IPC) - Section 304B, 306, 34

Hon'ble Judges: D.K. Sinha, J

Bench: Single Bench

Advocate: Ram Pravesh Sharma, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

D.K. Sinha, J.

The petitioners have invoked the inherent jurisdiction of this Court u/s 482 Cr.P.C. for quashment of the order dated 22.8.2007 passed by the C.J.M., Garhwa whereby and whereunder cognizance of the offence was taken u/s 304B/34 I.P.C. in Garhwa P.S. Case No. 106 of 2007 corresponding to G.R. No. 506 of 2007 against the petitioners and directed non-bailable warrants of arrest against the petitioners besides the husband Kuldeep Pandey, pending commitment.

The prosecution story lies in a narrow compass.

2. The informant in his Fard Bayan alleged that his sister Sanju Kumari was married to Kuldeep Pandey some two years ago and on the eve of their marriage Rs. 81,000/- in cash and articles worth Rs. 30,000/- were given. His sister lived at her matrimonial home without any complaint from any corner for some time but soon thereafter, the petitioners and her husband demanded a colour T.V. as well as a motorcycle to

which the informant expressed his inability to oblige them when the informant visited the matrimonial home of his sister, she complained that her husband and the petitioners were abusing and assaulting by extending threat that they would continue assaulting her lest she would bring colour TV and motorcycle from her parental home and also that her life would be made miserable. The informant tried to pacify and resolve the matter but of no avail. On 11.6.2007 his cousin Dilip Tiwari was called for and when he visited her matrimonial, her father-in-law Prem Pandey cautioned and asked him to take away his sister alleging that she was neither good to look at nor did she know how to cook food and complained that a motorcycle was not given to them. After two days on 13.7.2007, the informant received call from one Satrugan Pandey to immediately rush to his village Sote where his sister was married. Pursuant to that when he reached there, the villagers conveyed that his sister was set on fire and was taken to Garhwa Sadar Hospital for treatment. He immediately went there, found his sister badly burnt and after some time she succumbed her injuries in course of treatment. The informant alleged the complicity of the petitioners and her husband in setting her on fire in furtherance of common intention for dowry by confining her in a room and she died at Garhwa Hospital in course of her treatment.

3. Though the case was registered u/s 304B/34 I.P.C. against the petitioners and the husband Kuldeep Pandey but the police after investigation submitted charge-sheet for the offence only u/s 306 I.P.C. against the husband Kuldeep Pandey exonerating the criminal liability of the petitioners.

4. The main thrust of the defence was that the C.J.M., Garhwa without any protest petition on behalf of the informant as also without according opportunity to the petitioners took the cognizance of the offence u/s 304B/34 I.P.C. on 22.8.2007 against the petitioners as well though charge-sheet was filed u/s 306 I.P.C. only against husband. Learned Counsel exhorted that the cognizance order passed by the C.J.M., Garhwa was totally illegal, without jurisdiction and also without authority in law as no prima facie case was made out against the petitioners in course of investigation as no such material could be collected implicating them by the Investigating Officer. By summoning the petitioners the learned Counsel submitted that the C.J.M. usurped the power of the Sessions Court as contemplated u/s 319 Cr.P.C.

5. Relying upon a decision reported in [Raj Kishore Prasad Vs. State of Bihar and another](#), learned Counsel pointed out that the Apex Court held and observed:

It is thus manifest that in the sphere of the limited functioning of the Magistrate, no application of mind is required in order to determine any issue raised, or to adjudge anyone guilty or not, or otherwise to pronounce upon the truthfulness of any version. The role of the Magistrate thus is only to see that the package sent to the Court of Session is in order, so that it can proceed straightway with the trial and that nothing is lacking in content, as per requirement of Sections 207 and 208 of the

Code of Criminal Procedure.

6. As a matter of fact, the Apex Court observed as above after formulating the question.

Can a Magistrate undertaking commitment u/s 209 Cr.P.C. of case triable by a Court of Sessions, associate another person as accused, in exercise of power u/s 319 of the Code of Criminal Procedure, or under any other provision?

7. But I find that the observation made by the Apex Court has been misconstrued by the learned Counsel. In the Instant case, the stage was of taking cognizance of offence by the Chief Judicial Magistrate, Garhwa u/s 190(1)(b) of the Code of Criminal Procedure and not at the committal stage contemplated u/s 209 Cr.P.C. Admittedly, the jurisdiction u/s 319 Cr.P.C. is vested in the following exigency.

319. Power to proceed against other persons appearing to be guilty of offence.- (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under Sub-section (1) then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of Clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

8. Section 319 gives ample power to the Court to take cognizance and add any person not being accused before it and try him along with accused persons sent up for trial. The power u/s 319 Cr.P.C. can be exercised only if it appears from the evidence adduced during enquiry or trial, the involvement of the person concerned in the offence being enquired into or tried. The Section provides that cognizance against the newly added accused is deemed to have been taken at the same manner in which cognizance was first taken of the offence of the earlier accused.

9. In the instant case, admittedly, it was neither the stage of 319 Cr.P.C. nor of 193 rather the learned C.J.M. in exercise of his jurisdiction u/s 190(1)(b) Cr.P.C. summoned the petitioners. The evidence envisaged in Section 319 of the Cr.P.C. is

the evidence tendered during trial of the case and the material placed before the committal Court cannot be treated as evidence collected during enquiry or trial. In the instant case, learned C.J.M. took the cognizance of the offence on the basis of the materials submitted before him by the Investigating Officer after investigation of the case and the other materials on the record.

10. The impugned order indicates that the learned C.J.M. on his subjective satisfaction on the materials placed before him took the cognizance of the offence u/s 304B/34 I.P.C. against the petitioners also whose names appeared in the statement of the witnesses and the materials were sufficient prima facie to proceed against them.

11. In [Minu Kumari and Another Vs. The State of Bihar and Others](#), the Apex Court held that:

When a report forwarded by the police to the Magistrate u/s 173(2)(1) is placed before him several situations arise; the report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation u/s 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he again has option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police u/s 156(3). The position is, therefore, now well settled that upon receipt of a police report u/s 173(2) a Magistrate is entitled to take cognizance of an offence u/s 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation had made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers u/s 190(1)(b) and direct the issue of process to the accused.

12. In the facts and circumstances as well as discussions made hereinabove, I observe that the learned Counsel for the petitioners failed to show any convincing and legal ground to call for interference in the cognizance order u/s 190(1)(b) impugned dated 22.8.2007 passed by the C.J.M., Garhwa in Garhwa P.S. Case No.

106 of 2007 for the offence u/s 304B/34 I.P.C. against the petitioners and the husband of the deceased.

There being not merit, this petition is dismissed.