

**(2002) 03 JH CK 0030**

**Jharkhand High Court**

**Case No:** Criminal M.P. No. 4775 of 2001

Mithilesh Kumar Singh and

Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

**Date of Decision:** March 26, 2002

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 319, 482
- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 307, 323, 325, 34, 341

**Citation:** (2002) CRLJ 3294 : (2002) 0 AIR JHAR HCR 764 : (2002) Crimes 4 429 : (2002) 2 DMC 609 : (2002) 2 JCR 480 : (2002) 2 JLJR 304

**Hon'ble Judges:** D.N. Prasad, J

**Bench:** Single Bench

**Advocate:** Binod Kumar Dubey, for the Appellant; B.V. Kumar, APP, for the Respondent

**Final Decision:** Allowed

### **Judgement**

@JUDGMENTTAG-ORDER

D.N. Prasad, J.

This is an application u/s 482 of the Code of Criminal Procedure (the Code) for quashing the order dated 16.7.2001 passed by the Chief Judicial Magistrate, Chatra, in connection with Itkhori P.S. Case No. 50 of 2001 corresponding to G.R. Case No. 377 of 2001, whereby and whereunder the learned Court below took cognizance of the offence under Sections 341, 323, 325, 498-A, 494 and 307/34 of the Indian Penal code and under Sections 3/4 of the Dowry Prohibition Act against the accused persons including the petitioners.

2. The prosecution case in brief is that one Bhuneshwar Singh filed a written petition before the Officer-in-Charge, Itkhori Police Station, stating therein that his daughter

Punam Devi was married with Madan Singh Son of Saligram Singh in the year 1993 and after marriage, both husband and wife lived together happily but after sometime, Sobha Devi, mother-in-law, Saligram Singh, father-in-law, dewar Mohan Kumar Singh and husband Madan Singh, started assaulting her and demanding to bring Motor Cycle, Rs. 25,000/- cash and jewellery etc. It is further alleged that they threatened for second marriage and second marriage was also performed on 1.5.2001 with the daughter of Uday Singh, namely, Puja Kumari. It is further alleged in the first information report that the life of the informant's daughter is in danger and, accordingly, first information report was lodged on the basis of the written report of the informant. The police investigated into the case and after investigation submitted charge-sheet in the case but the petitioners were not sent up for trial as no evidence could be collected against the petitioners.

3. The learned counsel appearing on behalf of the petitioners submitted that there is nothing specific/direct evidence or allegation against the petitioners to connect them with the alleged offence as well as during the course of investigation, senior police official who supervised the case, did not find the case to be true and recommended for submitting final report against the petitioners. The Investigating Officer after collecting evidence submitted the charge-sheet against the accused Madan Singh and Jageshwar Singh under Sections 341, 323, 225, 498-A, 494 and 307/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act, but the investigation remained continued against Saligram Singh, Sobha Devi and Mohan Singh, whereas the petitioners, namely, Uday Singh, Mithilesh Singh, Ram Kinkar Singh and accused Puja Kumari were found to be innocent and, as such, they were not sent up for trial. It is further submitted that even after filing of the charge-sheet, specifically let off the petitioners by the Investigating Officer and the senior police official who supervised the case but the court below took cognizance against the petitioners also illegally and without appreciating the evidence on records properly.

4. Apparently final report has been submitted against the petitioners for whom nothing could have been detected and the petitioners were sent up for trial. I have no doubt to hold that the learned Magistrate has not correctly construed the law. The position might have been changed if after submission of the charge-sheet against only two accused persons, a protest petition would have been filed from the side of informant against the petitioners. As noticed above, the Magistrate has no option but to take cognizance for the offences in respect of two accused persons who have been charge sheeted. The power is vested with the Sessions Judge/Trial Court to issue processes and put the remaining accused persons/petitioners on trial in case any material comes during the inquiry or trial as laid down u/s 319 of the Code of Criminal Procedure.

5. Sessions Court can also summons the persons left by the Investigating Officer in the charge-sheet if the Sessions Court finds prima facie case against those persons

as enunciated u/s 193 of the Code of Criminal Procedure. Thus the court below, in my view, committed error in taking cognizance against the petitioners without cogent evidence against the petitioners.

6. Having regard to the above facts and circumstances, I am, therefore, of the view that the impugned order passed by the learned Magistrate is not in accordance with law and is liable to be quashed.

7. In the result, this application is allowed and the impugned order dated 16.7.2001 passed by the learned Chief Judicial Magistrate as against the petitioners is hereby quashed.